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California Legislature

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CHAPTER 790

An act to amend Section 685.070 of the Code of Civil Procedure, relating to the courts.

[Approved by Governor September 11, 1990. Filed with Secretary of State September 13, 1990]

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

SECTION 1. Section 685.070 of the Code of Civil Procedure is amended to read:

685.070. (a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment.

(2) Statutory fees for filing a notice of judgment lien on personal property.

(3) Statutory fees for issuing a writ for the enforcement of the judgment to the extent that the fees are not satisfied pursuant to Section 685.050.

(4) Statutory costs of the levying officer for performing the duties under a writ to the extent that the costs are not satisfied pursuant to Section 685.050 and the statutory fee of the levying officer for performing the duties under the Wage Garnishment Law to the extent that the fee has not been satisfied pursuant to the wage garnishment.

(5) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of Division 2 that have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.

(b) Before the judgment is fully satisfied but not later than two years after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve a copy on the judgment debtor. Service shall be made personally or by mail. The memorandum of costs shall be executed under oath by a person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply to the court on noticed motion to have the costs taxed by the court. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

(d) If no motion to tax costs is made within the time provided in subdivision (c), the costs claimed in the memorandum are allowed.

(e) If a memorandum of costs for the costs specified in subdivision (a) is filed at the same time as an application for a writ of execution, these statutory costs not already allowed by the court in an amount not to exceed one hundred dollars ($100) in the aggregate may be included in the amount specified in the writ of execution, subject to subsequent disallowance as ordered by the court pursuant to a motion to tax if filed by the debtor. The memorandum of costs shall contain the following statement: "The fees sought under this memorandum may be disallowed by a court upon a motion to tax filed by the debtor notwithstanding the fees having been included in the writ of execution." The inclusion of the above costs in the writ of execution or the pendency of the motion to tax on these costs shall not be cause for the clerk of the court to delay issuing the writ of execution or for the levying officer to delay enforcing the writ of execution.

CHAPTER 791

An act to add Section 740.3 to the Public Utilities Code, relating to the Public Utilities Commission, and making an appropriation therefor.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990.]

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

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

(a) In response to concerns about air quality in California, in 1987 the Legislature enacted a law creating the Advisory Board on Air Quality and Fuels to evaluate and make recommendations regarding the necessity and feasibility for using mandates or incentives to facilitate the introduction of clean transportation fuels in California.

(b) In October 1989, the board issued a report to the Legislature which concluded that the use of alternative fuels will provide improvements in air quality beyond what is achievable from conventionally fueled vehicles using the most advanced emissions controls.

(c) The board also concluded that the current state of vehicle technology looks promising for electric-powered and compressed natural gas-fueled vehicles, along with other alternative fuel technologies.

(d) In its recommendations for mandates and incentives, the board urged the Public Utilities Commission to work with the regulated electric and natural gas utilities and with the State Energy Conservation and Development Commission to evaluate policies for developing equipment and infrastructure that may be needed to

facilitate the use of electric power and compressed natural gas to fuel low-emission vehicles.

(e) It is in the interest of the State of California to provide incentives for the development and market penetration of clean fuel vehicles, including electric-powered and compressed natural gas-fueled vehicles, to assist in the attainment and maintenance of healthful air quality, and to provide transportation fuel security through a diversity of alternative fuels.

(f) State policies to encourage electric and gas utilities to enter into ventures to promote the commercialization of electric-powered and compressed natural gas-fueled vehicles should ensure that the costs and expenses of implementing commercialization programs are not passed through to electric or gas ratepayers unless the Public Utilities Commission finds and determines that those programs are in the ratepayers' interest. State policies should also ensure that utilities do not unfairly compete with nonutility enterprises.

SEC. 2. Section 740.3 is added to the Public Utilities Code, to read:

740.3. (a) The commission, in cooperation with the State Energy Conservation and Development Commission, the State Air Resources Board, air quality management districts and air pollution control districts, regulated electrical and gas corporations, and the motor vehicle industry, shall evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles. Policies to be considered shall include both of the following:

(1) The sale-for-resale and the rate-basing of low-emission vehicles and supporting equipment such as batteries for electric vehicles and compressor stations for natural gas fueled vehicles.

(2) The development of statewide standards for electric vehicle charger connections and compressed natural gas vehicle fueling connections, including installation procedures and technical assistance to installers.

(b) The commission shall hold public hearings as part of its effort to evaluate and implement the new policies considered in subdivision (a), and shall provide a progress report to the Legislature by January 30, 1993, and every two years thereafter, concerning policies on rates, equipment, and infrastructure implemented by the commission and other state agencies, federal and local governmental agencies, and private industry to facilitate the use of electric power and natural gas to fuel low-emission vehicles.

(c) The commission's policies authorizing utilities to develop equipment or infrastructure needed for electric-powered and natural gas-fueled low-emission vehicles shall ensure that the costs and expenses of those programs are not passed through to electric or gas ratepayers unless the commission finds and determines that those programs are in the ratepayers' interest. The commission's policies shall also ensure that utilities do not unfairly compete with nonutility

enterprises.

SEC. 3. The sum of one hundred eighteen thousand dollars ($118,000) is hereby appropriated from the Public Utilities Commission Utilities Reimbursement Account in the General Fund to the Public Utilities Commission for startup costs for implementing this act for the 1990–91 fiscal year.

CHAPTER 792

An act to add Section 68052 to the Education Code, relating to postsecondary education.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990.]

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

SECTION 1. Section 68052 is added to the Education Code, to read:

68052. (a) It is the intent of the Legislature that California's public institutions of higher education shall establish nonresident student tuition policies which are consistent with their resident student fee policies. Nonresident student tuition shall be determined by each of the public postsecondary segments through the adoption of a methodology which annually establishes the nonresident student tuition rate. It is further the intent of the Legislature that, while the public institutions are to be provided flexibility in establishing their nonresident tuition, under no circumstances shall the level of nonresident tuition plus required fees fall below the marginal cost of instruction for that segment.

(b) The following state policies regarding nonresident student tuition are hereby established:

(1) Unless otherwise prescribed by statute, an admission fee and rate of tuition fixed by each public postsecondary governing board shall be required of each nonresident student. Each public postsecondary education governing body shall develop its own methodology for establishing the nonresident tuition level and its annual adjustment level of nonresident student tuition, unless otherwise prescribed by statute.

(2) As California's public postsecondary education segments annually adjust the level of nonresident tuition they charge out-of-state students, the nonresident tuition methodologies they develop and use should take into consideration, at minimum, the following two factors:

(A) For the University of California and the California State University, the total nonresident charges imposed by each of their public comparison institutions, as identified by the California Postsecondary Education Commission.

(B) The full average cost of instruction of their segment.

(3) It is the intent of the Legislature that under no circumstances shall an institution's level of nonresident tuition plus required student fees fall below the marginal cost of instruction for that segment.

(4) The nonresident student tuition at the University of California, the California State University, the Hastings College of the Law, and the California Maritime Academy should endeavor to ensure that increases in the level of nonresident tuition are gradual, moderate, and predictable by providing nonresident students with a minimum of a 10-month notice of tuition increases.

(c) No provision of this section shall be applicable to the Regents of the University of California or to the Board of Directors of the Hastings College of the Law unless the regents or the board of directors, as appropriate, adopt a resolution to make those provisions applicable.

(d) No provision of this section shall be applicable to the California Community Colleges.

(e) In the event that state revenues and expenditures are substantially imbalanced due to factors unforeseen by the Governor and the Legislature, including, but not limited to, initiative measures, natural disasters, or sudden deviations from expected economic trends, the nonresident student tuition at the University of California, the California State University, the Hastings College of the Law, and the California Maritime Academy, shall not be subject to the provisions of this section.

CHAPTER 793

An act relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. For purposes of subdivision (b) of Section 46200 of the Education Code, a school district shall not be deemed to offer less than 180 days of instruction in the 1989–90 fiscal year if that district certifies to the Superintendent of Public Instruction all of the following:

(a) That if it offers 175 or more days of instruction for the 1989–90 fiscal year.

(b) That unanticipated delay in the construction of school facilities of the district delayed the opening of one or more schools of the district.

(c) That it increases the total instructional time in the days of

instruction offered for the 1989–90 fiscal year to an amount equal to the total instructional time that would otherwise result from offering 180 or more days of instruction for that fiscal year.

(d) That, prior to January 1, 1990, the district submitted a request to the State Board of Education for a waiver of subdivision (b) of Section 46200 of the Education Code for purposes of the determination of its state funding entitlement for the 1989–90 fiscal year.

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 entitle certain school districts to certain state funding to be allocated in the current fiscal year, it is necessary that this act take effect immediately.

CHAPTER 794

An act to amend Sections 1063.5 and 1063.14 of the Insurance Code, relating to insurance.

[Approved by Governor September 11, 1990. Filed with Secretary of State September 13, 1990.]

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

SECTION 1. Section 1063.5 of the Insurance Code is amended to read:

1063.5. Each time an insurer becomes insolvent then, to the extent necessary to secure funds for the association for payment of covered claims of that insolvent insurer and also for payment of reasonable costs of adjusting the claims, the association shall collect premium payments from its member insurers sufficient to discharge its obligations. The association shall allocate its claim payments and costs, incurred or estimated to be incurred, to one or more of the following categories: (a) workers' compensation claims; (b) homeowners' claims, and automobile claims, which shall include: automobile material damage, automobile liability (both personal injury and death and property damage), medical payments and uninsured motorist claims; and (c) claims other than workers' compensation, homeowners', and automobile, as above defined. Separate premium payments shall be required for each category. The premium payments for each category shall be used to pay the claims and costs allocated to that category. The rate of premium charged shall be a uniform percentage of net direct written premium in the preceding calendar year applicable to that category. The rate of premium charges to each member in the appropriate categories shall initially be based on the written premium of each insurer as

shown in the latest year's annual financial statement on file with the commissioner. The initial premium shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the second year following the year in which the initial premium charge is made. The difference between the initial premium charge and the adjusted premium charge shall be charged or credited to each member insurer by the association as soon as practical after the filing of the annual statements of the member insurers with the commissioner for the year on which the adjusted premium is based. "Net direct written premiums" shall mean the amount of gross premiums, less return premiums and policyholder's dividends paid or allowed, received in that calendar year upon business done in this state, other than premiums received for reinsurance. In cases of a dispute as to the amount of any such net direct written premium between the association and one of its members the written decision of the commissioner shall be final. The premium charged to any member insurer for any of the three categories or a category established by the association shall not be more than 1 percent of the net direct premium written in that category in this state by that member insurer. However, in no event shall the total premium charged a member insurer in one calendar year exceed 1 percent of the net direct premium written by the member insurer in one calendar year. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders by the company whose assessment was deferred. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. These payments shall be credited against future assessments to those companies receiving larger assessments by virtue of the deferment. The premium charges shall be recognized in the ratemaking procedures for insurance rates in the same manner that losses are recognized or as otherwise provided in this article. After all covered claims of the insolvent insurer and expenses of administration have been paid, any unused premiums and any reimbursements or claims dividends from the liquidator remaining in any category shall be retained by the association and applied to reduce future premium charges in the appropriate category. However, an insurer which ceases to be a member of the association shall have no right to a refund of any premium previously remitted to the association. The commissioner may suspend or revoke the certificate of authority to transact business in this state of a member insurer which fails to pay a premium when due and after demand has been made.

Interest at a rate equal to the current federal reserve discount rate

plus 2½ percent per annum shall be added to the premium of any member insurer which fails to submit the premium requested by the association within 30 days after such mailing request. However, in no event shall the interest rate exceed the legal maximum.

SEC. 2. Section 1063.14 of the Insurance Code is amended to read:

1063.14. (a) The plan of operation adopted pursuant to subdivision (c) of Section 1063 shall contain provisions whereby each member insurer is required to recoup over a reasonable length of time a sum reasonably calculated to recoup the assessments paid by the member insurer under this article by way of a surcharge on premiums charged for insurance policies to which this article applies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agents' commission.

(b) The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. The association shall determine the rate of the surcharge and the collection period for each category and these shall be mandatory for all member insurers of the association who write business in those categories. Member insurers who collect surcharges in excess of premiums paid pursuant to Section 1063.5 for an insolvent insurer shall remit the excess to the association as an additional premium within 120 days after the end of the collection period determined by the association. The excess shall be applied to reduce future premium charges for that insurer in the appropriate category.

(c) The plan of operation may permit a member insurer to omit collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge. However, nothing in this section shall relieve the member insurer of its obligation to recoup the amount of surcharge otherwise collectible.

CHAPTER 795

An act to amend Sections 11755, 11815.5, 11818.5, 11983.2, and 11983.21 of, to add Section 11983.22 to, and to repeal Section 11867 of, the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. Section 11755 of the Health and Safety Code is amended to read:

11755. The department shall do all of the following:

(a) Adopt regulations pursuant to Section 11152 of the

Government Code.

(b) Employ administrative, technical, and other personnel as may be necessary for the performance of its powers and duties.

(c) Do or perform any of the acts which may be necessary, desirable, or proper to carry out the purpose of this part.

(d) Provide funds to counties for the planning and implementation of local programs to alleviate problems related to inappropriate alcohol and drug use.

(e) Review and approve or disapprove county alcohol program plans and county drug program plans submitted for state and federal funds allocated by the department.

(f) Provide for technical assistance and training to local alcohol and drug programs to assist in the planning and implementation of quality services. The department may charge a fee to cover the cost of providing technical assistance to alcohol and drug programs.

(g) Review research in, and serve as a resource to provide information relating to, alcohol and drug programs.

(h) In cooperation with the Department of Personnel Administration, encourage training in other state agencies to assist the agencies to recognize employee problems relating to inappropriate alcohol use or drug use which affect job performance and encourage the employees to seek appropriate services.

(i) Develop and implement a statewide plan to alleviate problems related to inappropriate alcohol use and to overcome the barriers to their solution and to develop and implement a statewide plan to alleviate problems related to inappropriate drug use and to overcome the barriers to their solution. These plans shall be revised annually. The State Advisory Board on Alcohol-Related Problems shall review and make recommendations to the department on the development of the statewide alcohol plan. The State Advisory Board on Drug Programs shall review and make recommendations to the department on the development of the statewide drug plan. In order to avoid duplication of efforts in developing statewide alcohol and drug plans, the department shall consult with the Office of Statewide Health Planning and Development and the California Health Policy and Data Advisory Commission to adopt a uniform format and policy for the development of the statewide alcohol plan and statewide drug plan to facilitate its incorporation into the state health plan.

(j) Assist and cooperate with the Office of Statewide Health Planning and Development and the California Health Policy and Data Advisory Commission in the drafting and adoption of the state health plan to assure inclusion of appropriate provisions relating to alcohol problems and drug problems.

(k) In the same manner and subject to the same conditions as other state agencies, develop and submit annually to the Department of Finance a program budget for the state-funded alcohol program and the state-funded drug program which shall include expenditures proposed to be made under this division, and

may include expenditures proposed to be made by any other state agency relating to alcohol or drug problems, pursuant to an interagency agreement with the department.

(*l*) Review and certify alcohol programs meeting state standards pursuant to Chapter 7 (commencing with Section 11830), and review and certify drug abuse treatment programs pursuant to Section 11994.

(m) Develop standards for assuring minimal statewide levels of service quality provided by alcohol and drug service programs.

(n) Review and license methadone treatment programs.

(o) Develop and implement, in partnership with the counties, alcohol and drug prevention strategies especially designed for youth.

(p) Develop and maintain a centralized alcohol and drug abuse indicator data collection system which shall gather and obtain information on the status of the alcohol and drug abuse problem in the State of California. This information shall include, but not be limited to, all of the following:

(1) The number and characteristics of persons receiving recovery or treatment services from alcohol and drug programs providing publicly funded services or services licensed by the department.

(2) The location and types of services offered by these programs.

(3) The number of admissions to hospitals on both an emergency room and inpatient basis for alcohol- and drug-related treatment.

(4) The number of arrests for alcohol and drug violations.

(5) The number of the Department of the Youth Authority commitments for drug violations.

(6) The number of Department of Corrections commitments for drug violations.

(7) The number or percentage of persons having alcohol or drug problems as determined by survey information.

(8) The amounts of illicit drugs confiscated by law enforcement in the state.

(9) The statewide alcohol and drug treatment program distribution and the fiscal impact of alcohol and drug problems upon the state.

Providers of publicly funded services or services licensed by the department to clients-participants shall report data in a manner, format, and under a schedule prescribed by the department.

(q) Issue a report annually, which portrays the drugs abused, populations affected, user characteristics, crime-related costs, socioeconomic costs, and other related information deemed necessary in providing a problem profile of alcohol and drug abuse in the state.

SEC. 2. 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. No approval by the department shall be required for budget amendments which cumulatively redirect no more than 10 percent of the funds allocated to the county by the department on an annual basis. Final plan amendments, or budget amendments in excess of 10 percent, shall be submitted to the department by May 31 of the current fiscal year. If, after the May 31 deadline, a county determines that in order to maximize the expenditure of state and federal funds, an additional budget amendment is required, the county shall notify the department. Upon the notification, a county may submit the cost report required by subdivision (a) of Section 11818.5 for approval as a revised final budget amendment. However, if the department disapproves of the cost report so submitted, the county shall submit an amended cost report which complies with subdivision (a) of Section 11818.5.

SEC. 3. 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 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. 4. Section 11867 of the Health and Safety Code is repealed.

SEC. 5. 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.

(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. 6. 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. No approval by the department shall be required for budget amendments which cumulatively redirect no more than 10 percent of the funds allocated to the county by the department on an annual basis. Final plan amendments, or budget amendments in excess of 10 percent, shall be submitted to the department by May 31 of the current fiscal year. If, after the May 31 deadline, a county determines that in order to maximize the expenditure of state and federal funds, an additional budget amendment is required, the county shall notify the department. Upon the notification, a county may submit the cost report required by subdivision (e) of Section 11991.5 for approval as a revised final budget amendment. However, if the department disapproves of the cost report so submitted, the county shall submit an amended cost report which complies with subdivision (e) of Section 11991.5.

SEC. 7. Section 11983.22 is added to the Health and Safety Code, to read:

11983.22. 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 with the annual cost report. The department 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.

CHAPTER 796

An act to add Section 49505 to the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990.]

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

SECTION 1. The Legislature hereby finds and declares that natural disasters result in destruction and damage to schools, houses, apartments and other dwellings and in the subsequent displacement of children who are left homeless and without access to nutritious meals. It is the intent of the Legislature to assist child nutrition entities by ensuring funding for food services rendered to children who are so affected by a state or federally declared disaster.

SEC. 2. Section 49505 is added to the Education Code, to read:

49505. (a) Any school district or county office of education participating in the National School Lunch Program that provides a meal to a pupil rendered homeless by a state or federally declared disaster may receive reimbursement equal to the combined state and federal free rate, regardless of the pupil's eligibility for free meals. It is the intent of the Legislature to ensure that pupils who are not eligible for free meals be considered for inclusion in the meal program when their families are temporarily unable to provide adequate meals for them due to the effects of a natural disaster. It is the intent of the Legislature that the reimbursement for these children be on a temporary basis.

(b) Any school district or county office of education participating in the National School Lunch Program which is unable to meet the meal component requirement of the state meal program because of a state or federally declared disaster is exempted from serving all required meal components and may be reimbursed at the combined

state and federal rates as if the meal component requirements had been met.

(c) The State Department of Education may provide a school district or county office of education participating in the National School Lunch Program which has been temporarily closed as a result of a state or federally declared disaster a reimbursement equal to the average daily participation times the average combined state and federal reimbursement rate received by the entity in the month prior to the closure, times the number of days the entity is closed to pay for salaries and other fixed expenses of child nutrition programs.

(d) The State Department of Education shall make reimbursements pursuant to subdivision (a), (b), or (c) to school districts and county offices of education participating in the National School Lunch Program from money appropriated from the General Fund for that purpose. Requests for those reimbursements shall be subject to the review and approval of the State Department of Education. Any funds provided for the purposes of this section shall be in lieu of state reimbursement for child nutrition programs.

(e) All school districts and county offices of education participating in the National School Lunch Program that apply for exemptions and allowances pursuant to subdivision (c) shall demonstrate conformity with any applicable procedures required in the Disaster Relief Act of 1974, P.L. 93-288, as amended by P.L. 100-707. The State Department of Education shall ensure that applicants for relief under subdivision (c) have followed those procedures.

(f) For purposes of this section, "state or federally declared disaster" means only a state or federally declared disaster that occurs on or after the effective date of this section.

(g) Moneys in the Disaster Response-Emergency Operations Account in the Reserve for Economic Uncertainties may be allocated for the purposes of this section.

SEC. 3. Notwithstanding any other provision of law, the Chula Vista City School District may submit an application for incentive funding pursuant to Section 42250.3 of the Education Code after the December 31, 1989, deadline for that application has passed. The Chula Vista City School District application for funds pursuant to Section 42250.3 shall be treated as if it had been received prior to the application deadline.

Due to the unique circumstances concerning the Chula Vista City School District, it is necessary that its application for certain funding be processed after the deadline, and 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. 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 this act may provide updated levels of state funding

for emergency disaster relief and school incentive funding commencing with the 1990–91 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 797

An act to amend and renumber Sections 31537 and 31673.1 of, to add Section 31538 to, and to add Chapter 3.9 (commencing with Section 31899) to 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 September 11, 1990. Filed with Secretary of State September 13, 1990]

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

SECTION 1. Section 31537 of the Government Code is amended and renumbered to read:

31899.3. (a) It is the intent of the Legislature, in enacting this section and Section 31899.4, to ensure that each member of a county retirement system affected by the limits contained in Section 415 of the Internal Revenue Code 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 limits contained in Section 415 of the Internal Revenue Code.

(b) Each board is requested to assist the Public Employees' Retirement System in its report to the Legislature, as required by Section 20123.5. Each board is encouraged to ascertain, to the extent possible and in conjunction with its actuarial evaluation which is required by Section 31453 or any annual evaluation conducted pursuant to board policy, the impact that Section 415 of the Internal Revenue Code will have on the future membership of each county retirement system, and also to identify for 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. However, in no instance, shall the recommended benefits exceed the limitations set forth in Section 415 of the Internal Revenue Code.

(c) It is the intent of the Legislature in authorizing these studies, 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) Chapter 3 (commencing with Section 31450) shall be construed as if it included this section.

(e) This section shall not apply in a 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.

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

SEC. 2. Section 31538 is added to the Government Code, to read:

31538. The board shall adjust the payment of benefits payable pursuant to this part, as necessary, in order to maximize the benefits available to members who are subject to the limits of Section 415 of the Internal Revenue Code. Those adjustments shall include, but are not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof.

SEC. 2.5. Section 31673.1 of the Government Code, is amended and renumbered to read:

31899.4. (a) Notwithstanding any other provision of law, the retirement rights conferred by this chapter 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 chapter shall accrue to or vest in such a person which exceeds, the limitations in the Internal Revenue Code upon public retirement systems.

(b) Each retirement 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 1990, that would exempt all members of a county 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 (P.L. 100-674). This subdivision shall become inoperative on January 1, 1992.

(d) Chapter 3 (commencing with Section 31450 shall be construed as if it included this section.

(e) This section shall not apply in a 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.

SEC. 3. Chapter 3.9 (commencing with Section 31899) is added to Division 4 of Title 3 of the Government Code, to read:

CHAPTER 3.9. INTERNAL REVENUE CODE COUNTY COMPLIANCE AND OPTIONAL REPLACEMENT BENEFIT PROGRAM

31899. The purpose of this chapter is to ensure the federal tax-exempt status of the county employees' retirement systems, to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions, and to ensure that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of Section 415 of the Internal Revenue Code.

To achieve this purpose, this chapter incorporates certain pension payment limitations and elects the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code. Also, this chapter provides for certain replacement benefits.

This chapter shall not apply to a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statues of 1961.

31899.1. The definitions in Chapter 3 (commencing with Section 31450) of this part shall apply to this chapter.

31899.2. (a) In accordance with Section 31899.4, the retirement benefits for any person who for the first time became a member of the system on or after January 1, 1990, shall be subject to the payment limitations of Section 415 of the Internal Revenue Code.

(b) The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made.

(c) This section shall not apply in a 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.

31899.5. Each county shall be deemed to have elected pursuant to Part 3.4 (commencing with Section 21750) of Division 5 of Title 2 to contract with the Public Employees' Retirement System for the administration of replacement benefits for members whose retirement benefits are limited by Section 415 of the Internal Revenue Code and cannot be fully maximized pursuant to Section 31538.

31899.6. This chapter shall be administered by the board in conformity with its powers and duties set forth in Chapter 3 (commencing with Section 31450) of this part.

31899.7. If the Internal Revenue Service determines that any provision of Chapter 3 (commencing with Section 31450) of this part or this chapter cannot be given effect without placing a retirement system administered under this chapter or Chapter 3 (commencing with Section 31450) out of conformity with Section 415 of the Internal Revenue Code, that provision, only to the extent that it causes that nonconformity and only with respect to the affected parties shall become inoperative with respect to the payment of benefits pursuant to Chapter 3, as of the effective date of the determination.

The retirement board shall notify the Secretary of State of inoperation under this section.

31899.8. (a) If Section 415 of the Internal Revenue Code is amended to exclude public retirement systems, or if the application of Section 415 of the Internal Revenue Code to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all sections of this chapter, except this section, shall become inoperative as of the effective date of that amendment or decision. The retirement board shall immediately notify the Secretary of State whenever any provision of this chapter becomes inoperative pursuant to this section.

(b) Whenever all sections of this chapter, except this section, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the retirement board shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and reimburse annuitants for that portion of their pension funds which had been credited to the State Replacement Benefit Custodial Fund but not yet been disbursed, with accrued interest.

(3) Take any and all other actions it deems necessary or feasible.

31899.9. It is the sole intent of the Legislature, in enacting this chapter, to fully comply with the provisions of the Internal Revenue Code which apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems, to elect the "grandfather" option in Section 415(b) (10) of the Internal Revenue Code, and to provide for the provision, to the extent deemed reasonable, of commensurate replacement benefits to affected members of the county employees' retirement systems.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2, as construed in City of Sacramento v. State of California (50 Cal. 3d 51).

It is the intent of the Legislature that this chapter not be construed to impose upon local public agencies which are maintaining county retirement systems pursuant to Chapter 3 (commencing with Section 31450) of this part, state-reimbursable, state-mandated local program benefit costs within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of this title.

If either the Commission on State Mandates or a court determines that this chapter imposes upon any such local agency, state-mandated local program benefit costs, notwithstanding any other provision of law, no reimbursement therefor shall be made

from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of this title or from any other state fund.

31899.10. The Legislature reserves the power and right to amend this chapter, as needed to effect its purposes. This chapter shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

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 (1) all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of 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, as construed in City of Sacramento v. State of California (50 Cal. 3d 51); and (2) 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. 5. This act shall not become operative unless Senate Bill 2373 of the 1989-1990 Regular Session of the Legislature is chaptered.

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 hiatus in the status of the retirement benefits of persons becoming members, on or after January 1, 1990, of county retirement systems maintained pursuant to the County Employees Retirement Law of 1937, and therefore, becoming subject to the benefit limitations imposed by Section 415 of the Internal Revenue Code, may be eliminated at the earliest possible time, and in order that other technical applications of the "grandfather" election under Section 415(b) (10) of the Internal Revenue Code, may be applied in a uniform manner as soon as possible upon the entry of new members into the county retirement systems maintained pursuant to the County Employees Retirement Law of 1937, it is necessary that this act take effect immediately.

CHAPTER 798

An act to amend and renumber Sections 20123.5 and 21200.01 of, to add Section 20123.6 to, and to add Part 3.4 (commencing with Section 21750) to Division 5 of Title 2 of, the Government Code, and to amend Section 5 of Chapter 1305 of the Statutes of 1989, relating to the Public Employees' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1990. Filed with Secretary of State September 13, 1990.]

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

SECTION 1. Section 20123.5 of the Government Code is amended and renumbered to read:

21753. (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) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

(e) 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. 2. Section 20123.6 is added to the Government Code, to read:

20123.6. The board shall adjust the payment of benefits payable pursuant to this part, as necessary, in order to maximize the benefits available to members who are subject to the limits of Section 415 of the Internal Revenue Code. Those adjustments shall include, but are not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof.

SEC. 2.5. Section 21200.01 of the Government Code is amended and renumbered to read:

21754. (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.

(d) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

SEC. 3. Part 3.4 (commencing with Section 21750) is added to Division 5 of Title 2 of the Government Code, to read:

PART 3.4. INTERNAL REVENUE CODE COMPLIANCE AND REPLACEMENT BENEFIT PROGRAM

21750. The purpose of this part is to ensure the federal tax-exempt status of the Public Employees' Retirement System, and any other retirement system hereunder administered, to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions, and to ensure that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the actuarial value of the benefits which would have been received but for the limitations imposed by Section 415 of the Internal Revenue

Code.

To achieve this purpose, this part incorporates certain pension payment limitations and elects the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code. Also, this part contains certain payment provisions and replacement benefits.

21751. The definitions in Part 3 (commencing with Section 20000) shall apply to this part. The following definitions shall also govern the interpretation of this part:

(a) "Participating agency" means any public agency which meets the criteria for becoming a contracting agency in the Public Employees' Retirement System pursuant to Chapter 4 (commencing with Section 20450) of Part 3 of this division, but which has not elected to participate in the Public Employees' Retirement System as a contracting agency, and which elects to contract with the board of administration to participate in the replacement benefit program administered pursuant to this part by the board of adminstration.

21752. (a) In accordance with Section 21754 (former Section 21200.01), the retirement benefits for any person who for the first time becomes a member of the Public Employees' Retirement System on or after January 1, 1990, shall be subject to the payment limitations of Section 415 of the Internal Revenue Code.

(b) The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made.

(c) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

21755. (a) If any member's retirement benefits would be limited by Section 415 of the Internal Revenue Code, the board shall, at retirement, adjust the payment of benefits pursuant to Part 3 (commencing with Section 20000) of this division, including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits or any combinations thereof in order to maximize the member's benefits within the limits of Section 415 of the Internal Revenue Code.

(b) The board shall establish a program of replacement benefits for members whose retirement benefits are limited by Section 415 of the Internal Revenue Code and cannot be fully maximized pursuant to Part 3 (commencing with Section 20000). The benefits provided by that program may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination hereunder shall include, but not be limited to, the following: legal constraints, administrative feasibility, and cost-effectiveness. The board may periodically modify the replacement benefits program and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The administrative costs of the replacement benefits program shall be satisfied out of funds credited to the accounts of the participant members, and shall not be paid from the Public

Employees' Retirement Fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 of the Internal Revenue Code to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21756.

(d) The application of Section 415 of the Internal Revenue Code to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of actuarial calculations. Under no circumstances shall the replacement benefit program result in increased benefit costs to an employer, member, or annuitant.

21756. There is in the State Treasury a Replacement Benefit Custodial Fund which shall be administered exclusively by the board, which is separate and apart from the Public Employees' Retirement Fund or any other retirement trust fund and which is, notwithstanding Section 13340, continuously appropriated, without regard to fiscal years, to the board to carry out the purposes of this part.

The earnings on the assets of the Replacement Benefit Custodial Fund are continuously appropriated to the board for expenditure solely to pay the costs of administering this part.

The Replacement Benefit Custodial Fund shall also consist of: employer contributions, in amounts equivalent to the benefits which are not paid from either the Public Employees' Retirement Fund or the retirement trust fund of a participating agency to annuitants because of the application of the payment limitations under Section 415 of the Internal Revenue Code; and administrative costs assessed to and paid by members enrolled in the replacement benefit program.

The board shall determine the amount of employer contributions required for deposit into the Replacement Benefit Custodial Fund, based on all of the following:

(1) The amount of benefits which will not be payable from the Public Employees' Retirement Fund, or the retirement trust fund of a participating agency, because of the payment limitations in Section 415 of the Internal Revenue Code.

(2) The amount by which an employer's contributions to the Public Employees' Retirement Fund, or the retirement fund of a participating agency will be reduced, for annuitants whose benefit payments are limited by Section 415 of the Internal Revenue Code.

The board shall establish within the Replacement Benefit Custodial Fund an individual account for each annuitant whose benefit payments are limited by Section 415 of the Internal Revenue Code. Employer contributions shall be credited to each account as of the date accrued and payable to the account of each annuitant as of the date on which the contribution is made. Replacement benefits shall be debited from each account as of the date paid to each

annuitant.

If all sections of this part, except Section 21761 and this section, become inoperative, pursuant to Section 21761, and all acts required and authorized by Section 21761 have been fully performed, any remaining balance in a member's individual account in the Replacement Benefit Custodial Fund shall revert to, and become part of, the trust fund of the retirement system from which the member retired.

21757. This part shall be administered by the board in conformity with its powers and duties set forth in Part 3 (commencing with Section 20000). The board shall, to the extent it determines feasible, follow the procedures set forth in Article 3 (commencing with Section 20160) of Chapter 2 of Part 3. The power conferred upon the board by Sections 20133 and 20180 shall encompass: any retirement system under this part, including participating agencies which contract for board administration of replacement benefits and employers which are required to enroll members in replacement benefits pursuant to Section 21755.

21758. The board, in addition to its general rulemaking authority under Section 20120, may adopt regulations which implement this part. Those regulations shall be exempt from substantive review by the Office of Administrative Law, in particular from that office's review under Sections 11346.5 and 11346.7, subdivision (c) of Section 11346.8, subdivision (b) of Section 11347.3, and Sections 11349.1, 11349.2, 11349.3, and 11349.4. The board may adopt regulations which implement this part on an emergency basis, without regard to the substantive review provisions set forth in subdivisions (a) to (c), inclusive, of Section 11349.6.

21759. The state and all contracting agencies under the Public Employees' Retirement System shall be deemed to have elected to contract with the board for administration of the replacement benefit program pursuant to this part. A participating agency may contract with the board for administration to participate in the replacement benefit programs administered by the board of administration, as follows:

(a) A participating agency shall deposit its replacement benefit contributions into the Replacement Benefit Custodial Fund, as the board directs.

(b) At the request of the board, the participating agency shall furnish such data concerning its members as the board requires to direct the payment of replacement benefit contributions.

(c) A public agency which intends to contract under this section and become a participating agency shall do so only pursuant to the procedure set forth in Sections 20457 to 20460, inclusive.

(d) The ordinance or resolution by which a public agency approves a contract under this section shall be filed with the board. A participating agency under this section shall not maintain any other replacement benefit program, except upon the express approval of the board.

(e) A contract entered into under this section may be amended pursuant to the procedure set forth in Sections 20461 and 20461.2.

21760. If the Internal Revenue Service determines that any provision of Part 3 (commencing with Section 20000) or this part cannot be given effect without placing a retirement system administered under this part or Part 3 (commencing with Section 20000) out of conformity with Section 415 of the Internal Revenue Code, that provision, only to the extent that it causes that nonconformity and only with respect to the affected parties, shall become inoperative with respect to the payment of benefits pursuant to Part 3 (commencing with Section 20000) as of the effective date of the determination. The board shall notify the Secretary of State of inoperation under this section.

21761. (a) If Section 415 of the Internal Revenue Code is amended to exclude public retirement systems, or if the application of Section 415 of the Internal Revenue Code to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all sections of this part, except this section and Section 21756, shall become inoperative as of the effective date of that amendment or decision. The board shall immediately notify the Secretary of State whenever any provision of this part becomes inoperative pursuant to this section.

(b) Whenever all sections of this part, except this section and Section 21756, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the board shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and reimburse annuitants for that portion of their pension funds which had been credited to the Replacement Benefit Custodial Fund but not yet been disbursed, with accrued interest.

(3) Take any and all other actions it deems necessary or feasible.

21762. It is the sole intent of the Legislature, in enacting this part, to fully comply with the provisions of the Internal Revenue Code which apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the Public Employees' Retirement System, to elect the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code, and to provide, to the extent deemed reasonable, commensurate replacement benefits to affected members of the Public Employees' Retirement System and of other participating agencies which elect to contract with the Public Employees' Retirement System for the administration of a replacement benefits program.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of

Division 4 of Title 2, as construed in City of Sacramento v. State of California (50 Cal. 3d 51).

It is the intent of the Legislature, in enacting this part, to not impose upon local public agencies which are contracting agencies with the Public Employees' Retirement System or upon other local public agencies which elect to contract with the Public Employees' Retirement System for the administration of a replacement benefits program, state-reimbursable, state-mandated local program benefit costs within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of this title.

If either the Commission on State Mandates or a court determines that this part imposes upon any local agency state-mandated local program benefit costs, notwithstanding any other provision of law, no reimbursement therefor shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of this title or from any other state fund.

21763. The Legislature reserves the power and right to amend this part, as needed to effect its purposes. This part shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

SEC. 4. Section 5 of Chapter 1305 of the Statutes of 1989 is amended to read:

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 21753 and 21754 of the Government Code.

SEC. 5. There is hereby appropriated from the Public Employees' Retirement Fund the sum of two hundred fifty thousand dollars ($250,000) for expenditure by the Board of Administration of the Public Employees' Retirement System to pay the initial costs of administering Part 3.4 (commencing with Section 21750) of Division 5 of Title 2 of the Government Code.

SEC. 6. 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. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the hiatus in the status of the retirement benefits of persons becoming members, on or after January 1, 1990, of the Public Employees' Retirement System and, therefore, becoming subject to the benefit limitations imposed by Section 415 of the Internal Revenue Code, may be eliminated at the earliest possible time, and that other technical applications of the "grandfather" election under Section 415(b)(10) of the Internal Revenue Code, may be applied in a uniform manner as soon as possible upon the entry of new members into the Public Employees' Retirement System, it is necessary that this act take effect immediately.

CHAPTER 799

An act relating to oil spills, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. Notwithstanding any other provision of law, moneys appropriated from the Fish and Game Preservation Fund to the Department of Fish and Game pursuant to Section 7 of Chapter 1429 of the Statutes of 1985 are hereby continuously appropriated to the department without regard to fiscal years. The expenditure of any funds appropriated by Section 7 of Chapter 1429 of the Statutes of 1985, for consultant service contracts and costs incurred in compiling existing and producing new surveys and maps is not subject to Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code.

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

The appropriation authorized by this act supports investigations and projects directly related to improving the state's command, control, communications, training and practice drills, mapping of sensitive fish and wildlife and their habitat, and assessment and evaluation of natural resources at risk from or damaged by oil spills. Because of the risk posed to California's resources by oil spills, and recognizing that improved response preparedness is essential to reducing impacts to living natural resources and their habitat, it is necessary that this act take effect immediately.

CHAPTER 800

An act to amend Section 1164 of the Penal Code, relating to jury verdicts.

[Approved by Governor September 11, 1990. Filed with Secretary of State September 13, 1990.]

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

SECTION 1. 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 degree of the crime or crimes charged, and the truth of any alleged prior conviction whether in the same proceeding or in a bifurcated proceeding.

CHAPTER 801

An act to add Section 19849.16 to the Government Code, relating to state employees.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. Section 19849.16 is added to the Government Code, to read:

19849.16. Notwithstanding Section 18000, the Department of Personnel Administration may provide by rule for the accumulation and use of paid leave, including a lump-sum payment for accumulated leave, with respect to nonelected members of state boards and commissions whose annual salaries are fixed by law. Any rules adopted pursuant to this section shall provide for the reduction of the salary fixed by law of those nonelected members of state boards and commissions when their absences exceed their paid leave. The Department of Personnel Administration shall not provide paid leave benefits greater than the maximum benefits provided the employees designated as managerial by the

Department of Personnel Administration. Rules adopted pursuant to this section shall take effect after July 1, 1991.

SEC. 2. It is the intent of the Legislature that any increase in costs to state agencies resulting from the addition of Section 19849.16 to the Government Code by Section 1 of this act be absorbed by those agencies as ordinary and usual operating expenses.

CHAPTER 802

An act to amend Section 27538 of, and to add Sections 27793 and 27794 to, the Health and Safety Code, relating to food facilities.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. Section 27538 of the Health and Safety Code is amended to read:

27538. "Temporary food facility" means a food facility operating out of temporary facilities approved by the enforcement officer at a fixed location for a period of time not to exceed 25 days in any 90-day period in conjunction with a single event or celebration.

SEC. 2. Section 27793 is added to the Health and Safety Code, to read:

27793. Stationary mobile food preparation units may include a staffed counter which serves hot and cold beverages which are not a potentially hazardous food as defined in Section 27531, and which are dispensed from approved bulk dispensing units.

SEC. 3. Section 27794 is added to the Health and Safety Code, to read:

27794. (a) The enforcement agency may permit storage of supplies and food, which is not a potentially hazardous food as defined in Section 27531, in unopened containers adjacent to a stationary mobile food preparation unit, or in unopened containers in a nearby temporary storage unit.

(b) As used in this section, "unopened container" means a factory sealed container which has not been previously opened, that is suitably constructed to be resistant to contamination from moisture, dust, insects, and rodents.

CHAPTER 803

An act to amend Section 89049 of the Education Code, relating to student aid.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. Section 89049 of the Education Code is amended to read:

89049. (a) The trustees, in consultation with the Student Aid Commission, shall administer a program of scholarship awards and other methods of financial assistance, including work-study funding, as the trustees may deem appropriate.

(b) The recipients of financial assistance under this section shall be ethnic minority and disadvantaged students enrolled at campuses of the California State University in programs oriented to career placement in the real estate industry. In establishing and maintaining criteria for allocating this assistance, the trustees shall seek to maintain a balance among potential student applicants with regard to ethnic and cultural background and geographic residence.

(c) Of any state funding appropriated to the trustees for the purposes of this section, the principal shall be invested by the trustees in accordance with state law, and the resulting income and earnings shall be allocated to student financial assistance pursuant to subdivision (a).

(d) The trustees shall report annually to the Legislature regarding expenditures and awards pursuant to this section and the extent to which program participants enter careers in the real estate industry after graduation.

(e) 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.

CHAPTER 804

An act to amend Section 1033.5 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990]

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

SECTION 1. 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 stakeout 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, when authorized by either of the following:

(A) Contract.

(B) 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 allowable as costs pursuant to subparagraph (B) 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 allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) 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. Attorney's fees allowable as costs pursuant to subparagraph (A) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 as authorized by subparagraph (A) of paragraph (10) of subdivision (a).

SEC. 2. The Legislature finds and declares that there is great uncertainty as to the procedure to be followed in awarding attorney's fees where entitlement thereto is provided by contract to the prevailing party. It is the intent of the Legislature in enacting this act to confirm that these attorney's fees are costs which are to be awarded only upon noticed motion, except where the parties stipulate otherwise or judgment is entered by default. It is further the intent of the Legislature to vest the Judicial Council with the discretion provided in Section 1034 of the Code of Civil Procedure to adopt procedural guidelines establishing the time for the hearing of these motions, but the Legislature finds and declares that the criteria set forth in Section 870.2 of the California Rules of Court provide a fair and equitable procedure for the motions.

CHAPTER 805

An act to amend Section 3087 of the Fish and Game Code, relating to taxidermy, and making an appropriation therefor.

[Approved by Governor September 11, 1990 Filed with Secretary of State September 13, 1990.]

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

SECTION 1. Section 3087 of the Fish and Game Code is amended to read:

3087. (a) (1) Every person who prepares, stuffs, or mounts the skin of any fish, reptile, bird, or mammal for another person shall make and keep an accurate and detailed record, as prescribed by regulations of the commission, regarding all fish, reptile, bird, or mammal carcasses, skins, or parts thereof which are acquired, possessed, or stored for taxidermy purposes.

(2) The record required by this section shall be made at the time the fish, reptile, bird, or mammal carcasses, skins, or parts thereof are received, and shall include the name and address of each person from and to whom fish, reptile, bird, or mammal carcasses, skins, or parts thereof are received or delivered and the number and species of all fish, reptile, bird, or mammal carcasses, skins, or parts thereof received or delivered. The record shall be open for inspection at all times pursuant to regulations adopted by the commission.

(b) Where a taxidermist has prepared, stuffed, or mounted the skin of any fish, reptile, bird, or mammal for another person and that person does not pay the cost thereof, or take delivery thereof, the taxidermist may sell the skin only if the commission adopts regulations permitting the sale.

The commission may adopt regulations permitting a sale pursuant to Chapter 6 (commencing with Section 3046) of Title 14 of Part 4 of Division 3 of the Civil Code, and may adopt any other regulations governing the sale including, but not limited to, regulations which require a taxidermist to record, and provide to the department, the name and address of any person failing to pay for work performed on a skin, which list species of fish, reptiles, birds, or mammals whose prepared skins may not be sold, and which limit the sales price of prepared skins to the actual cost of preparation.

The commission may adopt regulations permitting a sale of a prepared skin pursuant to this subdivision only if the commission also adopts regulations which require the posting of a notice or otherwise giving notice at the place of business of the taxidermist informing patrons of the provisions of this subdivision and regulations adopted pursuant thereto.

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 806

An act to amend Section 41205 of the Education Code, relating to California Indian education centers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 13, 1990]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) California has the largest American Indian population in the country.

(b) American Indians were allowed to attend public school in this state for the first time in the 1900's. However, only 316 American Indian pupils were enrolled in the public schools of this state by 1913 and most American Indian youths did not attend public schools until the 1930's.

(c) The American Indian population has the highest illiteracy rate and highest dropout rate, at 45 percent, in the state.

(d) Ten community-based Indian education centers were created in 1974 to alleviate problems faced by the American Indian population, including low graduation rates and low attendance at postsecondary educational institutions. From these Indian education centers, models have emerged that contain viable components of an extremely successful community-based dropout prevention and recovery system for Indians and other high risk populations.

SEC. 2. *Section 41205 of the Education Code is amended to read:*

41205. The Legislature hereby finds and declares that the only state agencies that provide direct elementary and secondary level instructional services within the meaning of Section 41302.5 are those state agencies enumerated in Section 8880.5 of the Government Code, or in any successor to that section, not including any agency enumerated in any of subdivisions (a) to (f), inclusive, of that section, and California Indian education centers as established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20. The amount of any appropriation made to a state agency

for direct elementary and secondary level instruction services shall be determined by applying the definition of those services, as defined in the State School of Accounting Manual, to the expenditures of the agency.

SEC. 3. The sum of one million nine hundred twelve thousand dollars ($1,912,000) is hereby appropriated from the General Fund, from the contingency reserve established pursuant to Section 12.31 of the Budget Act of 1990, to the State Department of Education for apportionment for the 1990–91 fiscal year for California Indian education centers pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to meet critical funding needs for California Indian education centers, and to make certain revisions related to the funding of those centers, it is necessary that this act take effect immediately.

CHAPTER 807

An act to amend Section 14031.6 of the Government Code, relating to transportation.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 14031.6 of the Government Code is amended to read:

14031.6. (a) The Governor shall include in the Budget Bill an appropriation from the Transportation Planning and Development Account in the State Transportation Fund or from other appropriate sources to subsidize the operating costs of commuter and intercity passenger services pursuant to Section 14035 and an appropriation for capital outlay improvements to, and rolling stock for, intercity routes pursuant to Section 14038.

(b) The department shall request funding for capital improvements to commuter routes to which it provides subsidies through the transit capital improvement process established by Section 99317 of the Public Utilities Code.

(c) The department shall request funding for capital improvements and rolling stock for intercity rail passenger routes pursuant to Sections 14035 and 14038 through the transit capital improvement process established by the Public Utilities Code.

(d) This section does not apply to funds made available from

general obligation bonds issued for purposes of Section 164.55 of the Streets and Highways Code.

CHAPTER 808

An act to amend Sections 20107, 20111, 20129, 20189, 20192, 20201.5, 20204.3, 20214, 20224.5, 20234, 20242, 20251.5, 20262, 20274, 20284, 20294, 20302, 20314, 20322, 20332, 20342, 20352, 20374, 20392.5, 20405, 20413, 20471.5, 20483, 20501, 20512, 20522, 20532, 20551.5, 20564.5, 20584.5, 20602.5, 20624, 20633.5, 20642.5, 20651.5, 20674, 20685.5, 20688.25, 20694.5, 20724, 20737, 20752.2, 20761.5, 20784, 20804.5, 20832.5, 20843.5, 20867, 20893.5, 20916.5, and 20920 of the Public Contract Code, and to amend Section 130232 of the Public Utilities Code, relating to public contracts.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 20107 of the Public Contract Code is amended to read:

20107. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 4. 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 for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the school district.
(3) A certified check made payable to the school district.
(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all materials and supplies whether patented or otherwise.

SEC. 5. Section 20129 of the Public Contract Code is amended to read:

20129. (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.
(2) A cashier's check made payable to the 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. 6. Section 20189 of the Public Contract Code is amended to read:

20189. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 7. 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 for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the 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. 8. Section 20201.5 of the Public Contract Code is amended to read.

20201.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20204.3 of the Public Contract Code is amended to read:

20204.3. All bids for construction work 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. 10. Section 20214 of the Public Contract Code is amended to read:

20214. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20224.5 of the Public Contract Code is amended to read:

20224.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20234 of the Public Contract Code is amended to read:

20234. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20242 of the Public Contract Code is amended to read:

20242. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20251.5 of the Public Contract Code is amended to read:

20251.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20262 of the Public Contract Code is amended to read:

20262. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20274 of the Public Contract Code is amended to read:

20274. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20284 of the Public Contract Code is amended to read:

20284. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20294 of the Public Contract Code is amended to read:

20294. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20302 of the Public Contract Code is amended to read:

20302. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20314 of the Public Contract Code is amended to read:

20314. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20322 of the Public Contract Code is amended to read:

20322. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 22. Section 20332 of the Public Contract Code is amended to read:

20332. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 23. Section 20342 of the Public Contract Code is amended to read:

20342. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 24. Section 20352 of the Public Contract Code is amended to read:

20352. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 25. Section 20374 of the Public Contract Code is amended to read:

20374. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 26. Section 20392.5 of the Public Contract Code is amended to read:

20392.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 27. 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 for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the 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. 28. Section 20413 of the Public Contract Code is amended to read:

20413. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 29. Section 20471.5 of the Public Contract Code is amended to read:

20471.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidders 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. 30. Section 20483 of the Public Contract Code is amended to read:

20483. (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security 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 amended 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 for construction work 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. 32. Section 20512 of the Public Contract Code is amended to read:

20512. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security 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. 33. Section 20522 of the Public Contract Code is amended to read:

20522. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 34. Section 20532 of the Public Contract Code is amended to read:

20532. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 35. Section 20551.5 of the Public Contract Code is amended to read:

20551.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 36. Section 20564.5 of the Public Contract Code is amended to read:

20564.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 37. Section 20584.5 of the Public Contract Code is amended to read:

20584.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20602.5 of the Public Contract Code is amended to read:

20602.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20624 of the Public Contract Code is amended to read:

20624. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20633.5 of the Public Contract Code is amended to read:

20633.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20642.5 of the Public Contract Code is amended to read:

20642.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20651.5 of the Public Contract Code is amended to read:

20651.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20674 of the Public Contract Code is amended to read:

20674. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 44. Section 20685.5 of the Public Contract Code is amended to read:

20685.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20688.25 of the Public Contract Code is amended to read:

20688.25. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 46. Section 20694.5 of the Public Contract Code is amended to read:

20694.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 47. Section 20724 of the Public Contract Code is amended to read:

20724. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 48. Section 20737 of the Public Contract Code is amended to read:

20737. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20752.2 of the Public Contract Code is amended to read:

20752.2. Notwithstanding Section 20751, all bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 50. Section 20761.5 of the Public Contract Code is amended to read:

20761.5. Notwithstanding Section 20761, all bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 51. Section 20784 of the Public Contract Code is amended to read:

20784. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20804.5 of the Public Contract Code is amended to read:

20804.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20832.5 of the Public Contract Code is amended to read:

20832.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20843.5 of the Public Contract Code is amended to read:

20843.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20867 of the Public Contract Code is amended to read:

20867. The legislative body shall award the contract for doing the work to the lowest responsible bidder. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 56. Section 20893.5 of the Public Contract Code is amended to read:

20893.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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. 57. Section 20916.5 of the Public Contract Code is amended to read:

20916.5. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(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 20920 of the Public Contract Code is amended to read:

20920. All bids for construction work 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. 59. 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 for construction work 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.

CHAPTER 809

An act to add Sections 17138 and 24323 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 17138 is added to the Revenue and Taxation Code, to read:

17138. Any amount received as a rebate from a local water agency or supplier for any expenses the taxpayer paid or incurred for the purchase or installation of each water conservation water closet that meets the performance standards of American National Standards Institute Standard A112.19.2 and uses no more than 1.6 gallons per flush, or for the installation of a urinal which meets the performance standards of American National Standards Institute Standard A112.19.2 and uses no more than one gallon per flush, shall be treated as a refund or price adjustment of amounts payable to that water agency or supplier.

SEC. 2. Section 24323 is added to the Revenue and Taxation Code, to read:

24323. Any amount received as a rebate from a local water agency or supplier for any expenses the taxpayer paid or incurred for the purchase or installation of each water conservation water closet that meets the performance standards of the American National Standards Institute Standard A112.19.2 and uses no more than 1.6 gallons per flush, shall be treated as a refund or price adjustment of

amounts payable to that water agency or supplier.

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 810

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

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1990.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means counties, cities and counties, cities, and all of the following districts, authorities, agencies, boards, commissions, and other entities:

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

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts.

Bridge and highway districts.

Bridge, highway, and transportation districts.

California water district distribution districts.

California water district improvement districts.

California water districts.

Cemetery districts.

Citrus pest control districts.

City general improvement district improvement districts.

City general improvement districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community rehabilitation districts.

Community service district improvement districts.

Community service districts.

Conservancy districts.

Cotton pests abatement districts.
County boards of education.
County drainage districts.
County fire protection districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County power pumping districts.
County sanitation district improvement districts.
County sanitation districts.
County service area improvement areas.
County service areas.
County sewage and water districts.
County water agencies.
County water authorities.
County water district improvement districts.
County water districts.
County waterworks districts.
Crossing guard maintenance districts.
Department of Water Resources and other agencies acting under and pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Horticultural development districts.
Horticultural protection districts.
Housing authorities.
Industrial development authorities.
Integrated financing districts.
Irrigation district distribution districts.
Irrigation district improvement districts.
Irrigation districts.
Joint harbor improvement districts.
Joint highway districts.
Joint municipal sewage disposal districts.
Junior college districts.
Levee districts.
Library districts.

Local agency formation commissions.
Local health districts.
Local hospital districts.
Local transportation authorities.
Los Angeles County Transportation Commission.
Metropolitan transit development boards.
Metropolitan water districts.
Mosquito abatement districts.
Mosquito abatement or vector control districts.
Municipal facilities districts.
Municipal improvement assessment districts.
Municipal improvement district improvement districts.
Municipal improvement districts.
Municipal port districts.
Municipal sewer districts.
Municipal utility districts.
Municipal water district improvement districts.
Municipal water districts of any kind.
Parking authorities.
Parking districts.
Park, recreation, and parkway districts.
Permanent road divisions.
Pest abatement districts.
Port districts.
Project areas of redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility district improvement districts.
Public utility districts.
Rapid transit authorities.
Rapid transit districts.
Reclamation districts.
Recreational harbor districts.
Recreation and park districts.
Recreation, park, and parkway districts.
Redevelopment agencies.
Regional justice facility financing agencies.
Regional open-space districts.
Regional park and open-space districts.
Regional park districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road districts.
Sanitary agencies.
Sanitary districts.
Sanitary districts annexed areas.

School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Service zones of fire protection districts.
Sewer maintenance districts.
Special benefit assessment districts of the Southern California Rapid Transit District.
Special community services districts.
Special transit service districts.
Storm water districts.
Transit districts.
Underground utility districts.
Unified air pollution control districts.
Unified port districts.
Urban renewal agencies.
Vehicle parking districts.
Veterans' memorial districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage district improvement districts.
Water storage districts.
Weed abatement districts.
Zones of community service districts.
Zones of county service areas.
Zones of county water agencies.
Zones of county water authorities.
Zones of county waterworks districts.
Zones of flood control and water conservation districts.
Zones of flood control districts.

The term "public body" and the plural thereof, as used in this act, shall include only those entities which are specifically enumerated in this section.

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

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

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

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

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

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into any such public body or for the annexation of any such public body to any other such public body or for the withdrawal or exclusion of territory from any such public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of such territory or the consolidation, merger, or dissolution of such public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any such public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of such bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner in which issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with such authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with such authorization shall be the legal, valid, and binding obligations of the

public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, such bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with such authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply such legislative authorization as may be necessary to authorize, confirm, and validate any such acts and proceedings heretofore taken which the Legislature could have supplied or provided for in the law under which such acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent to which the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined or which is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter which has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of such matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period in which any action may be brought beyond the period in which it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any city or district, or any change in the boundaries of any city or district, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed under Sections 54900 to 54904, inclusive, of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 811

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time within which actions may be commenced.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. This act may be cited as the Third Validating Act of 1990.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means counties, cities and counties, cities, and all of the following districts, authorities, agencies, boards, commissions, and other entities:

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

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts.

Bridge and highway districts.

Bridge, highway, and transportation districts.

California water district distribution districts.

California water district improvement districts.

California water districts.

Cemetery districts.

Citrus pest control districts.

City general improvement district improvement districts.

City general improvement districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community rehabilitation districts.

Community service district improvement districts.

Community service districts.
Conservancy districts.
Cotton pests abatement districts.
County boards of education.
County drainage districts.
County fire protection districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County power pumping districts.
County sanitation district improvement districts.
County sanitation districts.
County service area improvement areas.
County service areas.
County sewage and water districts.
County water agencies.
County water authorities.
County water district improvement districts.
County water districts.
County waterworks districts.
Crossing guard maintenance districts.
Department of Water Resources and other agencies acting under and pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Horticultural development districts.
Horticultural protection districts.
Housing authorities.
Industrial development authorities.
Integrated financing districts.
Irrigation district distribution districts.
Irrigation district improvement districts.
Irrigation districts.
Joint harbor improvement districts.
Joint highway districts.
Joint municipal sewage disposal districts.
Junior college districts.

Levee districts.
Library districts.
Local agency formation commissions.
Local health districts.
Local hospital districts.
Local transportation authorities.
Los Angeles County Transportation Commission.
Metropolitan transit development boards.
Metropolitan water districts.
Mosquito abatement districts.
Mosquito abatement or vector control districts.
Municipal facilities districts.
Municipal improvement assessment districts.
Municipal improvement district improvement districts.
Municipal improvement districts.
Municipal port districts.
Municipal sewer districts.
Municipal utility districts.
Municipal water district improvement districts.
Municipal water districts of any kind.
Parking authorities.
Parking districts.
Park, recreation, and parkway districts.
Permanent road divisions.
Pest abatement districts.
Port districts.
Project areas of redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility district improvement districts.
Public utility districts.
Rapid transit authorities.
Rapid transit districts.
Reclamation districts.
Recreational harbor districts.
Recreation and park districts.
Recreation, park, and parkway districts.
Redevelopment agencies.
Regional justice facility financing agencies.
Regional open-space districts.
Regional park and open-space districts.
Regional park districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road districts.
Sanitary agencies.

Sanitary districts.
Sanitary districts annexed areas.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Service zones of fire protection districts.
Sewer maintenance districts.
Special benefit assessment districts of the Southern California Rapid Transit District.
Special community services districts.
Special transit service districts.
Storm water districts.
Transit districts.
Underground utility districts.
Unified air pollution control districts.
Unified port districts.
Urban renewal agencies.
Vehicle parking districts.
Veterans' memorial districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage district improvement districts.
Water storage districts.
Weed abatement districts.
Zones of community service districts.
Zones of county service areas.
Zones of county water agencies.
Zones of county water authorities.
Zones of county waterworks districts.
Zones of flood control and water conservation districts.
Zones of flood control districts.

The term "public body" and the plural thereof, as used in this act, shall include only those entities which are specifically enumerated in this section.

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

(c) "Hereafter" means any time subsequent to the effective date

of this act.

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

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

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

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into any such public body or for the annexation of any such public body to any other such public body or for the withdrawal or exclusion of territory from any such public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of such territory or the consolidation, merger, or dissolution of such public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any such public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of such bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner in which issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with such authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or

relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with such authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, such bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with such authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply such legislative authorization as may be necessary to authorize, confirm, and validate any such acts and proceedings heretofore taken which the Legislature could have supplied or provided for in the law under which such acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent to which the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined or which is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter which has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of such matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period in which any action may be brought beyond the period in which it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any city or district, or any change in the boundaries of any city or district, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed under Sections 54900 to 54904, inclusive, of the Government

Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 812

An act to amend Sections 18114, 18116, 18214, 18300, and 18305 of, and to add Section 18214.6 to, the Health and Safety Code, and to amend Section 5825 of the Revenue and Taxation Code, relating to mobilehomes.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 18114 of the Health and Safety Code is amended to read:

18114. (a) A registration fee of eleven dollars ($11) shall be due and payable to the department at the time of original registration or renewal of registration for each transportable section of a manufactured home, mobilehome, or commercial coach that is subject to annual renewal.

(b) For a manufactured home, mobilehome, or truck camper that is not subject to annual renewal, the registration fee of eleven dollars ($11) shall be due for each transportable section at the time of original registration and upon application for each subsequent change, addition, or deletion of registered owners, legal owners, or junior lienholders and shall be in addition to any other fees that may be required by the application.

(c) A registration fee of thirty dollars ($30) shall be charged for each original application for registration of a floating home and for each subsequent application to record a change, addition, or deletion of registered owners, legal owners, or junior lienholders of a floating home. This fee shall be in addition to any other fees that may be required by the application.

(d) A registration fee is delinquent if not paid in accordance with the following:

(1) On or before the expiration date of the previous registration year for all annual renewals.

(2) Ten days after the date the transaction is complete, as defined in subdivision (e) of Section 18080.5, for all transactions by or through a dealer whenever a manufactured home, mobilehome, or commercial coach is sold, rented, leased, leased with an option to buy, or otherwise transferred, except that for registration fees due because of annual renewal, the fee is delinquent after the expiration date of the previous registration year.

(3) Except for dealer transactions, 20 days after the registration fee became due for original registration required by subdivision (a),

and for registration fees required by subdivisions (b) and (c).

(e) A penalty of three dollars ($3) shall be added for each registration fee that is delinquent. No penalty is due if the application and required registration fees were placed in the United States mail before midnight on the day before the fee became delinquent, as evidenced by postmark or affidavit by the applicant.

SEC. 2. Section 18116 of the Health and Safety Code is amended to read:

18116. (a) A license fee is due and payable each year for renewal of registration, on or before midnight of the expiration date assigned by the department and noted on the registration card for all manufactured homes, mobilehomes, and commercial coaches which are not subject to local property taxation or otherwise exempt. The license fee is due and payable to the department in accordance with the following applicable time periods:

(1) As of the original date of sale, rental, or lease of a new commercial coach.

(2) Twenty days after the date of entry into California of a commercial coach previously registered in another state.

(3) Twenty days after the date of entry into California of a manufactured home or mobilehome sold as new prior to July 1, 1980, and previously registered in another state.

(b) License fees due for original registration of a new commercial coach are delinquent if not deposited with the department within 10 days of the original date of sale, rental, or lease. License fees due for renewal of registration for a manufactured home, mobilehome, or commercial coach are delinquent if not paid on or before midnight of the expiration date assigned by the department and noted on the registration card that was last issued. License fees due for a manufactured home, mobilehome, or commercial coach previously registered in another state are delinquent if not paid within 40 days after the date of entry into California. A penalty equal to 20 percent of the license fee due shall be added to any license fee due if it is allowed to become delinquent for a period of from 1 through 119 days. No penalty is due if the application and required license fees were placed in the United States mail before midnight on the day before the fees became delinquent, as evidenced by postmark or affidavit by the applicant.

(c) An added penalty of fifty dollars ($50) per transportable section shall be collected along with any other license fee and penalty due if the license fee for renewal of registration for a manufactured home or mobilehome is allowed to become delinquent for 120 days or more.

(d) An added penalty of two hundred dollars ($200) for each commercial coach shall be added to any license fee and penalty due if the license fee due for an original registration or for each subsequent renewal of registration is allowed to become delinquent for 120 days or more.

(e) It is the intent of the Legislature that license fees levied on

manufactured homes, mobilehomes, or commercial coaches subject to this part shall not be altered or increased from the rates and levels of license fees established prior to January 1, 1981.

SEC. 3. Section 18214 of the Health and Safety Code is amended to read:

18214. (a) "Mobilehome park" is any area or tract of land where two or more mobilehome lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes or mobilehomes used for human habitation. The rental paid for a manufactured home or mobilehome shall be deemed to include rental for the lot it occupies.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more mobilehome lots or spaces are rented or leased, held out for rent or lease, or provided as a term or condition of employment, to accommodate manufactured homes or mobilehomes used for the purpose of housing less than five agricultural employees shall not be deemed a mobilehome park.

SEC. 4. Section 18214.6 is added to the Health and Safety Code, to read·

18214.6. "Plan checking agency" means a private entity employing at least one architect or engineer licensed by the state to perform the review of plans and specifications for the construction of mobilehome parks, including buildings and permanently constructed fixtures, utility systems, streets and other regulated facilities, for the purpose of determining compliance with the applicable provisions of this part and the regulations promulgated thereunder. The plan checking agency shall submit to the department a list of all personnel performing plan checking reviews, including the individual's name, California architect or engineer license number and expiration date, and a summary of qualifications.

SEC. 5. Section 18300 of the Health and Safety Code is amended to read:

18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of this part and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations which set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the

qualifications required in the regulations which set forth the conditions for assumption shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations which set forth the conditions for assumption shall not set requirements for local agencies different than those which the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce this part and the regulations adopted pursuant to this part in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part, the local enforcement agency shall have the right to appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of this part. The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to manufactured homes, mobilehomes, or recreational vehicles and to accessory buildings or structures located both in or outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, mobilehome parks, and special occupancy parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, adult mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks or special occupancy parks.

(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home, mobilehome, or recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) From requiring a permit to use a manufactured home, mobilehome, or recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes, mobilehomes, and recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, recreational vehicle park, or temporary recreational vehicle park, under circumstances which the provisions of this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department.

(h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.

(2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units.

(i) The department may, at the department's sole option, enforce plan review activities associated with this part and the rules and regulations adopted thereunder through department-approved plan checking agencies. The department shall adopt regulations for approving and monitoring plan checking agencies, including, but not limited to, all of the following criteria:

(1) Freedom of any conflict of interest.

(2) Qualifications of personnel.

(3) A prohibition against collusive or fraudulent actions related to the performance of activities required by this part.

(4) Establishment of a schedule of fees to offset the department's cost of administering the approval and monitoring activities.

(5) Establishment of procedures for reimbursement to plan

checking agencies for plan review services rendered.

(6) Establishment of a schedule of citations and administrative fines issued by the department upon finding a violation of this subdivision on the part of a plan checking agency.

(7) Any other conditions of operation the department may reasonably require.

(j) (1) The department may, by regulation, provide for the qualification of plan checking agencies to perform reviews of plans and specifications for the construction of mobilehome parks and to perform reviews of plans and specifications for the construction of additional buildings or lots, the alteration of buildings, lots, or other installations, in an existing mobilehome park, in areas in which the department is the enforcement agency. The regulations shall specify that all approved plan checking agencies shall employ at least one architect or engineer, licensed by the State of California, and that the architect or engineer shall be responsible for all plan review activity specified in this part. Plans approved by department-approved agencies shall be deemed the equivalent of department approval of those plans.

(2) No agency approved to serve as a plan checking agency pursuant to this subdivision shall have a financial interest in any mobilehome park, with any owner, developer, or contractor of a mobilehome park, or in any entity used by the department for the purpose of performing oversight of the performance of plan checking agencies.

SEC. 6. Section 18305 of the Health and Safety Code is amended to read:

18305. (a) This part is not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by this part and the rules and regulations adopted pursuant to this part, if the alternate used has been approved.

(b) The department may approve any alternate if it finds that the proposed design is satisfactory and that the material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent to that prescribed in this part and the rules and regulations adopted pursuant to this part in quality, strength, effectiveness, fire resistance, durability, safety, and for the protection of life and health.

(c) Whenever there is evidence that any material, appliance, installation, device, arrangement, or method of construction does not conform to the requirements of this part and the rules and regulations promulgated pursuant to this part, or in order to substantiate claims for alternates, the department may require proof of compliance to be made at the expense of the owner or his or her agent.

(d) The department shall notify the appropriate enforcement agency and plan checking agency of its findings.

(e) This section is not applicable to local regulations authorized by

this part.

SEC. 7. Section 5825 of the Revenue and Taxation Code is amended to read:

5825. (a) "Newly constructed" and "new construction" means:

(1) Any substantial addition to a mobilehome since the last lien date; and

(2) Any alteration of the mobilehome which constitutes a major rehabilitation thereof or which converts the property to a different use.

(b) Any rehabilitation, renovation, or modernization which converts a mobilehome to the substantial equivalent of a new mobilehome is a major rehabilitation of such mobilehome.

(c) Notwithstanding subdivisions (a) and (b), if a mobilehome has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction or replacement of the mobilehome, or portion thereof, where the mobilehome after reconstruction or replacement is substantially equivalent to the mobilehome prior to damage or destruction. Any reconstruction or replacement of a mobilehome, or portion thereof, which is not substantially equivalent to the damaged or destroyed mobilehome, shall be deemed to be new construction and only that portion which exceeds substantially equivalent reconstruction or replacement shall have a new base year value determined pursuant to Section 110.1.

If a mobilehome, subject to vehicle license and registration fees pursuant to Article 6 (commencing with Section 18114) of Chapter 8 of Part 2 of Division 13 of the Health and Safety Code, is destroyed or damaged by misfortune or calamity and is replaced by a substantially equivalent mobilehome subject to local property taxation, the assessor shall determine a base year value for that replacement mobilehome so that the property taxes levied, after adjustment for any applicable exemption, shall be the same amount as the vehicle license and registration fees for the previous mobilehome for the year prior to its destruction or damage.

(d) Notwithstanding subdivisions (a) and (b), if a mobilehome, subject to vehicle license and registration fees pursuant to Article 6 (commencing with Section 18114) of Chapter 8 of Part 2 of Division 13 of the Health and Safety Code is taken by eminent domain, acquired by a public entity, or subject to any governmental action resulting in a judgment of inverse condemnation, "newly constructed" and "new construction" shall not mean any timely replacement of that mobilehome.

If a mobilehome, subject to vehicle license and registration fees pursuant to Article 6 (commencing with Section 18114) of Chapter 8 of Part 2 of Division 13 of the Health and Safety Code, is taken by eminent domain, acquired by a public entity, or subject to any governmental action resulting in a judgment of inverse condemnation, and is replaced by a comparable mobilehome subject to local property taxation, the assessor shall determine a base year

value for the replacement mobilehome so that the property taxes levied, after adjustment for any applicable exemption, shall be the same amount as the vehicle license and registration fees for the previous mobilehome in the year that mobilehome was taken, acquired, or adjudged to be inversely condemned.

(e) The assessor shall determine the new base year value for the portion of any mobilehome which has been newly constructed. The base year value of the remainder of the mobilehome assessed, which did not undergo new construction, shall not be changed. New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion at which time the entire portion of the mobilehome which is newly constructed shall be reappraised at its full value.

SEC. 8. The amendments made to Section 5825 of the Revenue and Taxation Code by this act do not constitute a change in, but are declaratory of, existing law.

SEC. 9. 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 classification or exemption 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. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claim Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs. 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 813

An act to repeal Section 5 of Chapter 825 of the Statutes of 1981, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 5 of Chapter 825 of the Statutes of 1981, as amended by Chapter 1333 of the Statutes of 1988, is repealed.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 814

An act to amend Section 2782 of, and to add Section 2782.6 to, the Civil Code, relating to indemnity.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 2782 of the Civil Code is amended to read:

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and which purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to such promisee, or for defects in design furnished by such persons, are against public policy and are void and unenforceable; provided, however, that this provision shall not affect the validity of any insurance contract, workers' compensation or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.

SEC. 2. Section 2782.6 is added to the Civil Code, to read:

2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer or geologist or

the agents, servants, independent contractors, subsidiaries, or employees of that engineer or geologist from liability as described in Section 2782 in providing hazardous materials identification, evaluation, preliminary assessment, design, remediation services, or other services of the types described in Sections 25322 and 25323 of the Health and Safety Code or the federal National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are satisfied:

(1) The services in whole or in part address subterranean contamination or other concealed conditions caused by the hazardous materials.

(2) The promisor is responsible, or potentially responsible, for all or part of the contamination.

(b) The indemnification described in this section is valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and is not applicable to the first two hundred fifty thousand dollars ($250,000) of liability or such greater amount as is agreed by the parties.

(c) This section does not authorize contracts for indemnification, by promisors specified in paragraph (2) of subdivision (a), of any liability of a promisee arising from the gross negligence or willful misconduct of the promisee.

(d) "Hazardous materials," as used in this section, means any hazardous or toxic substance, material, or waste which is or becomes subject to regulation as such by any agency of the state, any municipality or political subdivision of the state, or the United States. "Hazardous materials" includes, but is not limited to, any material or substance that is any of the following:

(1) A hazardous substance, as defined in Section 25316 of the Health and Safety Code.

(2) Hazardous material, as defined in subdivision (j) of Section 25501 of the Health and Safety Code.

(3) Acutely hazardous material, as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.

(5) Extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code.

(6) Petroleum.

(7) Asbestos.

(8) Designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

(9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903).

(10) A hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.

9601).

(11) A regulated substance, as defined by subsection (2) of Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

(e) Nothing in this section shall be construed to alter, modify, or otherwise affect the liability of the promisor or promisee, under an indemnity agreement meeting the criteria of this section, to third parties for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense.

(f) This section does not apply to public entities, as defined by Section 811.2 of the Government Code.

CHAPTER 815

An act to amend Section 2627.3 of the Unemployment Insurance Code, relating to unemployment insurance disability benefits.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 2627.3 of the Unemployment Insurance Code is amended to read:

2627.3. If an individual is unemployed and disabled for more than 14 days during the disability benefit period, the waiting period required by subdivision (b) of Section 2627 shall be waived.

SEC. 2. This act shall become operative with respect to periods of disability commencing on or after January 1, 1991. The provisions of law in effect prior to the amendment 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, 1991.

CHAPTER 816

An act to amend Section 77300 of the Government Code, relating to trial court funding.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 77300 of the Government Code is amended to read:

77300. (a) An option county shall notify the state of its decision to opt into the system for a specific fiscal year, on or before March

1 of the preceding fiscal year.

The Director of Finance shall advise the chairpersons of the legislative fiscal committees and the chairperson of the Joint Legislative Budget Committee by March 15 of each year regarding those counties which have notified the state of their decision to opt into the system for the succeeding fiscal year.

(b) However, a county which has reached its constitutional spending limit pursuant to Article XIII B of the California Constitution may notify the state of its decision to opt into the system after a successful override election allowing the county to utilize state funding for local trial courts, to be effective commencing with the next quarter following notification.

Nothing in this chapter shall be construed to prohibit the state and an option county, by mutual agreement between the Director of Finance and the parties signing the option resolution, from entering into a two-year option term.

By accepting state funding of trial courts, the county agrees to perform all duties and provide services required by this chapter and all other provisions of law.

CHAPTER 817

An act to amend Sections 1141.30 and 1280.1 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1141.30 of the Code of Civil Procedure, as added by Chapter 743 of the Statutes of 1978, is amended to read:

1141.30. This chapter shall not be construed in derogation of Title 9 (commencing with Section 1280) of Part 3, and, to that extent, this chapter and that title, other than Section 1280.1, are mutually exclusive and independent of each other.

SEC. 2. Section 1280.1 of the Code of Civil Procedure is amended to read:

1280.1. An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

The immunity afforded by this section shall supplement, and not supplant, any otherwise applicable common law or statutory immunity.

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. 3. The Senate Rules Committee shall commission a study on

whether it is necessary to extend quasi-judicial immunity to neutral third persons who are engaged in mediation, arbitration, conciliation, evaluation, or similar dispute resolution efforts. The study shall evaluate the pertinent case law and statutory provisions, including the litigation privilege under subdivision (2) of Section 47 of the Civil Code and the immunity for arbitrators provided in Section 1280.1 of the Code of Civil Procedure. Further, the study shall examine the competing policy arguments regarding exemptions from accountability for paid and volunteer persons appointed by the court and those not appointed by the court. The study shall be conducted under the auspices of a seven-member commission appointed by the Senate Rules Committee, except as specified, to be composed, as follows:

(a) A professor of law from a University of California law school.

(b) A representative of a voluntary bar association.

(c) A representative of the California Trial Lawyers Association.

(d) A representative of the State Bar of California.

(e) A lawyer selected by the Chair of the Assembly Committee on Judiciary.

(f) A lawyer selected by the Chair of the Senate Committee on Judiciary.

(g) A nonlawyer representative of the public engaged in dispute resolution selected by the Chair of the Senate Committee on Judiciary.

The study and report shall be completed and transmitted to the Legislature on or before January 1, 1993.

CHAPTER 818

An act to amend Section 32121.3 of the Health and Safety Code, relating to hospital districts.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 32121.3 of the Health and Safety Code is amended to read:

32121.3. (a) Notwithstanding any other provision of law, a hospital district, or any affiliated nonprofit corporation upon a finding by the board of directors of the district that it will be in the best interests of the public health of the communities served by the district and in order to obtain a licensed physician and surgeon to practice in the communities served by the district, may upon a four-fifths vote of the board do any of the following:

(1) Guarantee to a physician and surgeon a minimum income for a period of no more than three years from the opening of the

physician and surgeon's practice.

(2) Guarantee purchases of necessary equipment by the physician and surgeon.

(3) Provide reduced rental rates of office space in any building owned or leased by the district or any of its affiliated entities, or subsidize rental payments for office space in any other buildings, for a term of no more than three years.

(4) Provide other incentives to a physician and surgeon in exchange for consideration and upon terms and conditions the hospital district's board of directors deems reasonable and appropriate.

(b) Any provision in a contract between a physician and surgeon and a hospital district or affiliated nonprofit corporation is void which does any of the following:

(1) Imposes as a condition any requirement that the patients of the physician and surgeon, or a quota of the patients of the physician and surgeon, only be admitted to a specified hospital.

(2) Restricts the physician and surgeon from establishing staff privileges at, referring patients to, or generating business for another entity.

(3) Provides payment or other consideration to the physician and surgeon for the physician and surgeon's referral of patients to the district hospital or an affiliated nonprofit corporation.

(c) Contracts between a physician and surgeon and a hospital district or affiliated nonprofit corporation that provide an inducement for the physician and surgeon to practice in the community served by the district hospital shall contain both of the following:

(1) A provision which requires the inducement to be repaid with interest if the inducement is repayable.

(2) A provision which states that no payment or other consideration shall be made for the referral of patients to the district hospital or an affiliated nonprofit corporation.

(d) To the extent that this section conflicts with Section 650 of the Business and Professions Code, Section 650 of the Business and Professions Code shall supersede this section.

(e) The Legislature finds that this section is necessary to assist district hospitals to attract qualified physicians and surgeons to practice in the communities served by these hospitals, and that the health and welfare of the residents in these communities require these provisions.

CHAPTER 819

An act to amend Section 4537 of the Penal Code, relating to escapes.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 4537 of the Penal Code is amended to read:

4537. (a) The person in charge of any secure detention facility, including, but not limited to, a prison, a juvenile hall, a county jail, or any institution under the jurisdiction of the California Youth Authority, shall promptly notify the chief of police of the city in which the facility is located, or the sheriff of the county if the facility is located in an unincorporated area, of an escape by a person in its custody.

(b) The person in charge of any secure detention facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority shall release the name of, and any descriptive information about, any person who has escaped from custody to other law enforcement agencies, or to other persons if the release of the information would be necessary to assist in recapturing the person or to protect the public from substantial physical harm.

(c) In addition to the requirements of subdivisions (a) and (b), in cases of escape by persons in the custody of the Department of Corrections who have been convicted of a felony listed in subdivision (c) of Section 667.5 or who have effected the escape by force or violence as proscribed by subdivision (a) of Section 4530, prompt notification shall be given to the newspapers of general circulation within the county in which the escape occurred, and to television stations regularly broadcasting news into and within the county, accompanied by a photograph and description of the escapee.

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 820

An act to amend Section 1645 of the Health and Safety Code, relating to blood transfusions.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1645 of the Health and Safety Code is amended to read:

1645. (a) Whenever there is a possibility that a blood transfusion may be necessary as a result of a medical 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 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 the procedure for predonation to occur. Notwithstanding this chapter, if a patient waives allowing adequate time prior to the procedure for predonation to occur, a physician and surgeon shall not incur any liability for his or her failure to allow adequate time prior to the procedure 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 Medical Board of California 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 Medical Board of California 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 Medical Board of California for developing,

updating, publishing and distributing the summary. Physicians and surgeons shall purchase the written summary from the Medical Board of California for, or purchase or otherwise receive the written summary from any other entity for, distribution to their patients as specified in subdivision (a). Clinics, health facilities, and blood collection centers may purchase the summary if they desire.

(g) Any entity may reproduce the written summary prepared pursuant to subdivision (e) by the State Department of Health Services and distribute the written summary to physicians and surgeons.

CHAPTER 821

An act to amend Sections 20565 and 20759 of, and to add Section 20564.1 to, the Government Code, relating to public employees.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 20564.1 is added to the Government Code, to read:

20564.1. Notwithstanding any other provision of law, on and after January 1, 1991, the rights and benefits of a former employee of a contracting agency which terminated on or before January 1, 1991, or of his or her beneficiary, shall be the same as if the agency had continued as a contracting agency. Any monthly allowance of that individual, or of his or her beneficiary, which was reduced pursuant to Section 20564 because the contracting agency failed to pay the board the amount of the difference, shall not be subject to continued reduction on or after January 1, 1991. As of January 1, 1991, benefits shall be paid at the level provided in the contract prior to that reduction. However, if a former employee of a contracting agency which terminated on or before January 1, 1991, becomes employed by another covered employer after the date of termination, including an employer subject to reciprocity, the benefits shall be calculated by using the highest compensation earned by the individual.

In accordance with Section 20565, an individual who has withdrawn his or her accumulated contributions from the terminated agency shall not be permitted to redeposit any withdrawn contributions upon again becoming a member of this system.

All assets and liabilities of contracting agencies which have terminated on or before January 1, 1991, shall be pooled into a single account on January 1, 1991, to provide exclusively for the payment of benefits described in this section.

SEC. 2. Section 20565 of the Government Code is amended to read:

20565. Upon the termination of a contract, all memberships in this system existing because of that contract continue in existence to the extent that there are accumulated contributions to the credit of each local member, but any member may elect to withdraw his or her accumulated contributions. The status of any member who does not withdraw his or her accumulated contributions shall be the same as if the public agency had continued as a contracting agency. The membership of any member who elects to withdraw his or her accumulated contributions shall be terminated forthwith, and he or she shall not be entitled to any further benefit based upon service credited as an employee of the contracting agency, nor shall he or she have the right to redeposit those withdrawn contributions upon again becoming a member of this system. The portion of the contributions of the contracting agency held under Section 20563 to the credit of each member shall be determined by the board, and may be adjusted from time to time prior to termination of membership. A member whose membership continues under this section is subject to the same age and incapacity requirements as apply to other members for service or for disability retirement, but he or she is not subject to a minimum service requirement. Except as provided in Section 20564.1, he or she shall receive the retirement benefits as his or her accumulated contributions, together with the portion of the excess of the contributions of the contracting agency as are credited to him or her, will provide, as determined by the board, but the provisions of this part relative to minimum retirement allowances shall not apply to him or her, nor shall those benefits exceed the benefits provided by the contract prior to its termination. Upon the death of a member the basic death benefit shall be his or her accumulated contributions.

SEC. 3. Section 20759 of the Government Code is amended to read:

20759. A contracting agency which is not an employer or which ceases to be an employer for purposes of this chapter shall thereafter make contributions as otherwise provided in Chapter 4 (commencing with Section 20450). Except as provided in Section 20564.1, if a contracting agency ceases to be an employer for purposes of this section, its contributions thereafter and the accumulated contributions credited to or held as having been made by the agency adjusted by addition of all contributions thereafter made by the employer and subtraction of amounts paid thereafter to or on account of employees of the contracting agency shall be held, on and after the date upon which such contracting agency ceases to be an employer, exclusively for the benefit of its employees, retired employees and beneficiaries of the employees and retired employees.

CHAPTER 822

An act to amend Section 302 of the Penal Code, relating to crimes.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 302 of the Penal Code is amended to read:

302. (a) Every person who willfully disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for a period not exceeding six months, or by both that fine and imprisonment.

(b) A court may require performance of community service of not less than 20 hours and not exceeding 40 hours as an alternative to imprisonment or a fine.

(c) In addition to the penalty set forth in subdivision (a), a person who has suffered a previous conviction of a violation of this section or Section 403, shall be required to perform community service of not less than 40 hours and not exceeding 80 hours.

(d) In addition to the penalty set forth in subdivision (a), a person who has suffered two or more previous convictions of violations of this section or Section 403, shall perform community service of not less than 80 hours and not exceeding 120 hours.

(e) The existence of any fact which would bring a person under subdivision (c) or (d) shall be alleged in the complaint, information, or indictment and either:

(1) Admitted by the defendant in open court.

(2) Found to be true by a jury trying the issue of guilt.

(3) Found to be true by the court where guilt is established by a plea of guilty or nolo contendere.

(4) Found to be true by trial by the court sitting without a jury.

(f) Upon conviction of any person under this section for disturbances of religious worship, the court may, in accordance with the performance of community service imposed under this section, consistent with public safety interests and with the victim's consent, order the defendant to perform a portion of, or all of, the required community service at the place where the disturbance of religious worship occurred.

(g) The court may waive the mandatory minimum requirements for community service whenever it is in the interest of justice to do so. When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

CHAPTER 823

An act to add Section 25334.6 to the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 25334.6 is added to the Health and Safety Code, to read:

25334.6. The department shall prepare, as part of the plan required by Section 25334.5, a site-specific accounting of the type of activity for which funds were spent or encumbered, including site characterization, remedial plans, or actual cleanup, and the source of the funds, for the previous fiscal year.

CHAPTER 824

An act to, amend Section 25503.5 of, and to add Section 25507.2 to, the Health and Safety Code, and to amend Section 2416 of the Vehicle Code, relating to hazardous materials.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 25503.5 of the Health and Safety Code is amended to read·

25503.5. (a) Any business, except as provided in subdivisions (b) and (c), which handles a hazardous material or a mixture containing a hazardous material which has a quantity at any one time during the reporting year equal to, or greater than, a total weight of 500 pounds, or a total volume of 55 gallons, or 200 cubic feet at standard temperature and pressure for compressed gas, or, if the substance is a radioactive material which is handled in quantities for which an emergency plan is required to be adopted pursuant to Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1) of, Chapter 10 of Title 10 of the Code of Federal Regulations (54 Federal Register 14051), or pursuant to any regulations adopted by the state in accordance with those regulations, shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards in the regulations adopted pursuant to Section 25503.

(b) Oxygen and nitrous oxide, ordinarily maintained by a

physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from Section 25505. The administering agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars ($50) to pay for the costs incurred by the agency in processing the inventory forms.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance specified in subdivision (k) of Section 25501, if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the office within five days of the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may, exempt a handler under the conditions it deems proper from any portion of the business plan upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying this exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph

(4) The administering agency upon application by a handler may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section

25504 if all of the following requirements are met:

(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.

(B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations which the office shall adopt, which provide notice of the storage of any of the following:

(i) Pesticides.

(ii) Petroleum fuels and oil.

(iii) Types of fertilizers.

(C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days after receiving the inventory.

(d) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(e) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

SEC. 2. Section 25507.2 is added to the Health and Safety Code, to read:

25507.2. In order to carry out the purposes of this chapter, an administering agency may train for, and respond to, the release, or threatened release, of a hazardous material.

SEC. 3. Section 2416 of the Vehicle Code is amended to read:

2416. (a) The Commissioner of the California Highway Patrol may issue authorized emergency vehicle permits only for the following vehicles, and then only upon a finding in each case that the vehicle is used in responding to emergency calls for fire or law enforcement or for the immediate preservation of life or property or for the apprehension of law violators:

(1) Any vehicle maintained in whole or in part by the state, a county or a city and privately owned and operated by a constable, deputy constable, marshal, deputy marshal, or person who is a member of, and who receives salary from, and is regularly employed by, a police department or sheriff's department, provided the state, county or city does not furnish to that person a publicly owned authorized emergency vehicle.

(2) Any vehicle owned and operated by a public utility, used primarily to accomplish emergency repairs to utility facilities or used primarily by railroad police officers, who are commissioned by the Governor, in the performance of their duties.

(3) Firefighting or rescue equipment designed and operated exclusively as such.

(4) Any vehicle operated by the chief, assistant chief, or one other uniformed person designated by the chief of a fire department organized as provided in the Health and Safety Code or the Government Code or pursuant to special act of the Legislature.

(5) Any vehicle of an air pollution control district used to enforce provisions of law relating to air pollution from motor vehicles.

(6) Any vehicle operated by the chief of any fire department established on any base of the armed forces of the United States.

(7) Any vehicle owned and operated by any fire company organized pursuant to Part 4 (commencing with Section 14825) of the Health and Safety Code.

(8) Privately owned ambulances licensed pursuant to Chapter 2.5 (commencing with Section 2500).

(9) Vehicles other than privately owned ambulances used by privately owned ambulance operators exclusively to transport medical supplies, lifesaving equipment, or personnel to the scene of an emergency when a request for medical supplies, lifesaving equipment, or personnel has been made by any person or public agency responsible for providing emergency medical transportation. These vehicles shall display a sign or lettering not less than two and one-half inches in height, in a color providing a sharp contrast to its background, on each side showing the name of the ambulance operator.

(10) Any vehicle owned and operated by an office or department of a city, county, or district which is designated by an ordinance adopted by the governing body of that local agency as a hazardous materials response team vehicle for response to hazardous materials emergencies.

(b) The commissioner may adopt and enforce regulations to implement this section.

(c) Violation of any regulation adopted by the commissioner pursuant to this section is a misdemeanor.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 825

An act to add Division 4 (commencing with Section 13000) to the Financial Code, relating to automated teller machine safety.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Division 4 (commencing with Section 13000) is added to the Financial Code, to read:

DIVISION 4. AUTOMATED TELLER MACHINES: USER SAFETY

CHAPTER 1. INTENT

13000. It is the intent of the Legislature in enacting this division to enhance the safety of consumers using automated teller machines in California without discouraging the siting of automated teller machines in locations convenient to consumers' homes and workplaces. Since decisions concerning safety at automated teller machine sites are inherently subjective and because safety is a relative matter, the Legislature intends to establish as the standard of care applicable to operators of automated teller machines, in connection with user safety, the substantial compliance with the objective standards of Chapter 4 (commencing with Section 13040), the information requirements of Chapter 5 (commencing with Section 13050), and the good faith consideration of other safety issues as prescribed in Chapter 3 (commencing with Section 13030). The Legislature further recognizes the need for uniformity as to the establishment of automated teller machine safety standards and intends with this division to supersede and preempt any rule, regulation, code, statute, or ordinance of any city, county, city and county, municipality, or local agency regarding customer safety at automated teller machines in California.

CHAPTER 2. DEFINITIONS

13020. As used in this division:

(a) "Access area" means any paved walkway or sidewalk which is within 50 feet of an automated teller machine. The term does not include publicly maintained sidewalks or roads, as defined in Section 555 or Section 527 of the Vehicle Code.

(b) "Access device" shall have the same meaning as set forth in Federal Reserve Board Regulation E (12 C.F.R. Part 205), promulgated pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1601 et seq.).

(c) "Automated teller machine" means any electronic information processing device located in California which accepts or dispenses cash in connection with a credit, deposit, or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations, or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier.

(d) "Candlefoot power" means the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.

(e) "Control" of an access area or defined parking area means to have the present authority to determine how, when, and by whom it is to be used, and how it is to be maintained, lighted, and landscaped.

(f) "Customer" means a natural person to whom an access device has been issued for personal, family, or household use.

(g) "Defined parking area" means that portion of any parking area open for customer parking which is (1) contiguous to an access area with respect to an automated teller machine; (2) regularly, principally, and lawfully used for parking by users of the automated teller machine while conducting automated teller machine transactions during hours of darkness; and (3) owned or leased by the operator of the automated teller machine or owned or controlled by the party leasing the automated teller machine site to the operator. The term does not include any parking area which is not open or regularly used for parking by users of the automated teller machine who are conducting automated teller machine transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subdivision and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the automated teller machine to be the most directly accessible to the users of the automated teller machine shall be a defined parking area.

(h) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

(i) "Operator" means any bank, savings association, credit union, industrial loan company, savings bank, or other business entity, or any person who operates an automated teller machine.

CHAPTER 3. LOCATION AND INSTALLATION

13030. On or before July 1, 1991, with respect to all existing installed automated teller machines in this state, and any automated teller machines installed after July 1, 1991, the operator shall adopt procedures for evaluating the safety of the automated teller machine. These procedures shall include a consideration of the following:

(a) The extent to which the lighting for the automated teller

machine complies or will comply with the standards required by Chapter 4 (commencing with Section 13040).

(b) The presence of landscaping, vegetation, or other obstructions in the area of the automated teller machine, the access area, and the defined parking area.

(c) The incidence of crimes of violence in the immediate neighborhood of the automated teller machine, as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge.

13031. It is not the intent of the Legislature in enacting this chapter to impose a duty to relocate or modify automated teller machines upon the occurrence of any particular events or circumstances, but rather to establish a standard of good faith for the evaluation of all automated teller machines as provided herein.

CHAPTER 4. LIGHTING

13040. (a) Each operator of an automated teller machine installed on or after July 1, 1991, shall comply with Section 13041 commencing on the date the automated teller machine is installed. Compliance with Section 13041 by operators as to automated teller machines existing as of July 1, 1991, shall be optional until July 1, 1993, and mandatory thereafter. This subdivision shall apply to an operator of an automated teller machine only to the extent that the operator controls the access area or defined parking area to be lighted.

(b) If an access area or a defined parking area is not controlled by the operator of the automated teller machine, and if the person who leased the automated teller machine site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with Section 13041 as to any automated teller machine installed on or after July 1, 1991, commencing on the date the automated teller machine is installed; and as to any automated teller machine existing as of July 1, 1991, no later than on July 1, 1993.

13041. The operator, owner, or other person responsible therefor, shall provide lighting during hours of darkness with respect to an open and operating automated teller machine and any defined parking area, access area, and the exterior of an enclosed automated teller machine installation according to the following standards:

(a) There shall be a minimum of 10 candlefoot power at the face of the automated teller machine and extending in an unobstructed direction outward five feet.

(b) There shall be a minimum of two candlefoot power within 50 feet from all unobstructed directions from the face of the automated teller machine. In the event the automated teller machine is located within 10 feet of the corner of the building and the automated teller machine is generally accessible from the adjacent side, there shall be minimum of two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building.

(c) There shall be a minimum of two candlefoot power in that portion of the defined parking area within 60 feet of the automated teller machine.

CHAPTER 5. CONSUMER EDUCATION

13050. Customers receiving access devices shall be furnished by the respective issuers thereof with notices of basic safety precautions which customers should employ while using an automated teller machine. This information shall be furnished by personally delivering or by mailing the information to each customer whose mailing address as to the account to which the access device relates is in this state. This information shall be furnished with respect to access devices issued on or after July 1, 1991, at or before the time the customer is furnished with his or her access device. With respect to a customer to whom an "accepted access device" (as defined in Federal Reserve Board Regulation E) has been issued prior to July 1, 1991, the information shall be delivered or mailed to the customer on or before December 31, 1991. Only one notice need be furnished per household, and if access devices are furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for the access devices, only a single notice need be furnished in satisfaction of the notification responsibilities as to all those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement furnished pursuant to the Electronic Fund Transfer Act.

CHAPTER 6. EXEMPTIONS

13060. The provisions of this division shall not apply with respect to any automated teller machine which is:

(a) Located inside of a building, unless it is a freestanding installation which exists for the sole purpose of providing an enclosure for the automated teller machine.

(b) Located inside of a building, except to the extent a transaction can be conducted from outside the building.

(c) Located in any area, including any access area, building, enclosed space, or parking area which is not controlled by the operator.

CHAPTER 7. EFFECT OF COMPLIANCE

13070. This division supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, cities and counties, municipalities, and local agencies regarding customer safety at automated teller machines located in California.

CHAPTER 826

An act to amend Section 21290.6 of the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 21290.6 of the Government Code is amended to read:

21290.6. Notwithstanding any provision of this part to the contrary, a retired state safety or state peace officer/firefighter member who, before January 1, 1986, was eligible for an industrial disability allowance and was living on or after December 30, 1989, but elected, instead, for a nonindustrial disability allowance may elect for an industrial disability retirement allowance. A change in retirement status pursuant to this section does not, in itself, constitute a basis for a change in the optional settlement or the beneficiary designation. The industrial disability allowance shall be calculated as if former Section 21293.5, as repealed by Chapter 557 of the Statutes of 1985, was never enacted and in no event shall be in an amount less than his or her nonindustrial disability allowance.

The allowance elected pursuant to this section shall be paid only on and after the effective date of the election and nothing in this section shall be construed as providing for any increase in benefits payable prior to the effective date of the election, or for any claim for such an increase. The effective date of an election shall be no earlier than the first day of the month following the month in which the election is received by the board.

Any state safety member who applies for an election pursuant to this section shall have the burden of proving that he or she was, by competent medical evidence, industrially disabled at retirement and the duties of his or her job at retirement.

The board has no duty to identify, locate, or notify any annuitant who may be eligible for the benefits provided 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 that the industrial disability retirement benefits provided by this act to disabled state safety and state peace officer/firefighter members of the Public Employees' Retirement System may be available at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 827

An act to add Section 31602 to the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 31602 is added to the Government Code, to read:

31602. Notwithstanding any other provision of law, the board of retirement, or, in counties that have established a board of investments, the board of investments, may establish a program utilizing the retirement fund to assist system members and annuitants, through financing, to obtain homes in this state.

The board shall adopt regulations governing the program which shall, among other things, provide:

(a) That home loans be made available to currently employed members and annuitants for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(b) That private lending institutions in this state shall originate and service its home loans pursuant to agreements entered into between those institutions and the board.

(c) That the recipients of the loans occupy the homes as their permanent residences in accordance with the rules and regulations established by the board.

(d) That its home loans shall be available only for the purchase or refinancing of homes in this state and that under no condition shall a member or annuitant have more than one outstanding loan.

(e) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board which shall provide a loan to value ratio of: (1) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (2) for the first loan on three-family dwellings and four-dwellings, a maximum of 90 percent of the first loan; and (3) for each additional loan, a maximum of 80 pecent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(f) That there may be prepayment penalties assessed on its loan in accordance with the rules and regulations established by the board.

(g) That the criteria and terms for its loans shall provide the greatest benefit to members and annuitants consistent with the financial integrity of the program and the sound investment of the retirement fund.

(h) Any other terms and conditions as the board shall deem appropriate.

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 828

An act to amend, repeal, and add Section 8207 of, and to add Sections 8207.1, 8207.2, 8207.3, and 8207.4 to, the Government Code, relating to notaries public.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 8207 of the Government Code is amended to read:

8207. (a) A notary public shall provide and keep an official seal, which shall clearly show, when embossed, stamped, impressed or affixed to a document, the name of the notary, the State Seal, the words "Notary Public" and the name of the county wherein the bond and oath of office are filed, and the date the notary public's commission expires. The notary public shall authenticate with the official seal all official acts.

A notary public shall not use the official notarial seal except for the purpose of carrying out the duties and responsibilities as set forth in this chapter. A notary public shall not use the title "notary public" except for the purpose of rendering notarial service.

The seal of every notary public shall be affixed by a seal press or stamp that will print or emboss a seal which legibly reproduces under photographic methods the required elements of the seal. The seal may be circular not over two inches in diameter, or may be a rectangular form of not more than an inch in width by two inches

and one-half in length, with a serrated or milled edged border, and shall contain the information required by this section.

(b) This section shall remain in effect only until December 31, 1991, and as of that date is repealed, unless prior to that date, a later chaptered statute deletes or extends that date.

SEC. 2. Section 8207 is added to the Government Code, to read:

8207. A notary public shall provide and keep an official seal, which shall clearly show, when embossed, stamped, impressed or affixed to a document, the name of the notary, the State Seal, the words "Notary Public," and the name of the county wherein the bond and oath of office are filed, and the date the notary public's commission expires. The seal of every notary public commissioned on or after January 1, 1992, shall contain the sequential identification number assigned to the notary and the sequential indentification number assigned to the manufacturer or vendor. The notary public shall authenticate with the official seal all official acts.

A notary public shall not use the official notarial seal except for the purpose of carrying out the duties and responsibilities as set forth in this chapter. A notary public shall not use the title "notary public" except for the purpose of rendering notarial service.

The seal of every notary public shall be affixed by a seal press or stamp that will print or emboss a seal which legibly reproduces under photographic methods the required elements of the seal. The seal may be circular not over two inches in diameter, or may be a rectangular form of not more than one inch in width by two and one-half inches in length, with a serrated or milled edged border, and shall contain the information required by this section.

This section shall become operative on January 1, 1992.

SEC. 3. Section 8207.1 is added to the Government Code, to read:

8207.1. The Secretary of State shall assign a sequential identification number to each notary which shall appear on the notary commission.

This section shall become operative on January 1, 1992.

SEC. 4. Section 8207.2 is added to the Government Code, to read:

8207.2. (a) No notary seal or press stamp shall be manufactured, duplicated, sold, or offered for sale unless authorized by the Secretary of State.

(b) The Secretary of State shall develop and implement procedures and guidelines for the issuance of notary seals on or before January 1, 1992.

(c) The Secretary of State shall issue a permit with a sequential identification number to each manufacturer or vendor authorized to issue notary seals. The Secretary of State may establish a fee for the issuance of the permit which shall not exceed the actual costs of issuing the permit.

(d) The Secretary of State shall develop a certificate of authorization to purchase a notary stamp from an authorized vendor.

(e) The certificate of authorization shall be designed to prevent forgeries and shall contain a sequential identification number.

(f) This section shall become operative on January 1, 1992.

SEC. 5. Section 8207.3 is added to the Government Code, to read:

8207.3. (a) The Secretary of State shall issue certificates of authorization with which a notary public can obtain an official notary seal.

(b) A vendor or manufacturer is authorized to provide a notary with an official seal only upon presentation by the notary public of a certificate of authorization.

(c) A vendor of official seals shall note the receipt of certificates of authorization and sequential identification numbers of certificates presented by a notary public upon a certificate of authorization.

(d) A copy of a certificate of authorization shall be retained by a vendor and the original, which shall contain a sample impression of the seal issued to the notary public, shall be submitted to the Secretary of State for verification and recordkeeping. The Secretary of State shall develop guidelines for submitting certificates of authorization by vendors.

(e) Any notary whose official seal is lost, misplaced, destroyed, broken, damaged, or is rendered otherwise unworkable shall immediately mail or deliver written notice of that fact to the Secretary of State. The Secretary of State, within five working days after receipt of the notice, if requested by a notary, shall issue a certificate of authorization which a notary may use to obtain a replacement seal.

(f) This section shall become operative on January 1, 1992.

SEC. 6. Section 8207.4 is added to the Government Code, to read:

8207.4. (a) Any person who willfully violates any part of Section 8207.1, 8207.2, 8207.3, or 8207.4 shall be subject to a civil penalty not to exceed one thousand five hundred dollars ($1,500) for each violation, which may be recovered in a civil action brought by the Attorney General or the district attorney or city attorney, or by a city prosecutor in any city and county.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

(c) This section shall become operative on January 1, 1992.

CHAPTER 829

An act to amend Sections 44253.5 and 44253.7 of the Education Code, relating to education.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 44253.5 of the Education Code is amended to read:

44253.5. The Commission on Teacher Credentialing shall grant certificates of bilingual-crosscultural competence. The purpose of these certificates is to increase the number of persons qualified to provide appropriate bilingual-crosscultural instruction to children whose native language is other than English and who are non- or limited-English speaking. The Commission on Teacher Credentialing shall also develop an assessment program that will provide a method by which persons holding valid teaching credentials may demonstrate their competence as bilingual-crosscultural teachers. These certificates shall certify, as a minimum, the following:

(a) That the person is competent in both the oral and written skills of a language other than English.

(b) That the person is competent in both the oral and written skills in the English language. A passing score on the reading and writing portions of the basic skills proficiency test administered pursuant to Section 44252.5 or pursuant to paragraph (1) of subdivision (b) of Section 44830 shall satisfy the written skills portion of this requirement.

(c) That the person has both the knowledge and understanding of the cultural and historical heritage of the students whose native language is other than English.

(d) That the person successfully can teach the basic teaching authorization in English and in a language other than English, and that person has been formally trained and is competent in the fields of language acquisition and development, structure of modern English, and basic principles of linguistics. The holder of this certificate is authorized to teach students whose native language is other than English.

The Commission on Teacher Credentialing shall require institutions of higher education to use the same rigorous assessment procedures as the assessor agencies prior to being eligible to recommend individuals for the certificate of bilingual-crosscultural competence.

In order to ensure reliability, validity, and objectivity of assessment, the Commission on Teacher Credentialing shall develop by July 1, 1981, uniform standards and procedures for assessing

bilingual-crosscultural competence as described in subdivisions (a), (b), and (c), and, to the maximum extent feasible, shall adopt standardized assessment instruments for Spanish and Cantonese.

SEC. 2. Section 44253.7 of the Education Code is amended to read:

44253.7. (a) In addition to the certificates authorized in Sections 44253.5 and 56362.7, the Commission on Teacher Credentialing, based upon the availability of funds, shall develop objective and verifiable standards for a certificate of bilingual-crosscultural competence for holders of any appropriate credential, certificate, authorization, or permit who will be serving limited-English-proficient pupils. These certificates may be issued to persons holding any appropriate credential or authorization issued by the commission, including, but not limited to, counselors; special education professionals, including, but not limited to, the holders of special education credentials, clinical services credentials, and school psychologist authorizations; and child development and preschool professionals.

(b) Candidates for the certificate shall, by oral and written examination, demonstrate all of the following:

(1) That the person is competent in both the oral and written skills of a language other than English.

(2) That the person is competent in both the oral and written skills in the English language. A passing score on the reading and writing portions of the basic skills proficiency test administered pursuant to Section 44252.5 or pursuant to paragraph (1) of subdivision (b) of Section 44830 shall satisfy the written skills portion of this requirement.

(3) That the person has both the knowledge and understanding of the cultural and historical heritage of the limited-English-proficient individuals to be served.

(4) That the person has the ability to perform the services the candidate is certified or authorized to perform in English and in a language other than English.

(c) The commission may develop rules and regulations setting forth objective and verifiable standards for approval of training programs leading to the certificates authorized by this section.

(d) For the purpose of assessing the qualifications established by the Commission on Teacher Credentialing in accordance with this section, the commission shall develop rules, regulations, or guidelines establishing an assessment system which may include local education agencies, institutions of higher education, and qualified nonprofit bilingual testing agencies as assessor agencies.

(e) It is not the intent of the Legislature in enacting this section that possession of any certificate established by this section be a state-mandated requirement for employment. It is the intent that this is a matter for local educational agencies to determine.

CHAPTER 830

An act to amend Section 1374.55 of the Health and Safety Code, and to amend Sections 10119.6 and 11512.28 of the Insurance Code, relating to infertility coverage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1374.55 of the Health and Safety Code is amended to read:

1374.55. (a) On and after January 1, 1990, every health care service plan contract which is issued, amended, or renewed that covers hospital, medical, or surgical expenses on a group basis, where the plan is not a health maintenance organization as defined in Section 1373.10, shall offer coverage for the treatment of infertility, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group subscriber and the plan. Every plan shall communicate the availability of that coverage to all group contractholders and to all prospective group contractholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed physician and surgeon as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians and surgeons including, but not limited to, diagnosis, diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) On and after January 1, 1990, every health care service plan which is a health maintenance organization, as defined in Section 1373.10, and which issues, renews, or amends a health care service plan contract that provides group coverage for hospital, medical, or surgical expenses shall offer the coverage specified in subdivision (a), according to the terms and conditions that may be agreed upon between the group subscriber and the plan to group contractholders with at least 20 employees to whom the plan is offered. The plan shall communicate the availability of the coverage to those group contractholders and prospective group contractholders with whom the plan is negotiating.

(d) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(e) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(f) Nothing in this section shall be construed to require any plan, which is a subsidiary of an entity whose owner or corporate member is a religious organization, to offer coverage for treatment of infertility in a manner inconsistent with that religious organization's religious and ethical principles.

For purposes of this subdivision, "subsidiary" of a specified corporation means a corporation more than 45 percent of the voting power of which is owned directly, or indirectly through one or more subsidiaries, by the specified corporation.

SEC. 2. Section 10119.6 of the Insurance Code is amended to read:

10119.6. (a) On and after January 1, 1990, every insurer issuing, renewing, or amending a policy of disability insurance which covers hospital, medical, or surgical expenses on a group basis shall offer coverage of infertility treatment, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group policyholder and the insurer. Every insurer shall communicate the availability of that coverage to all group policyholders and to all prospective group policyholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed physician and surgeon as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians and surgeons including, but not limited to, diagnosis, diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(d) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(e) Nothing in this section shall be construed to require any insurer, which is a subsidiary of an entity whose owner or corporate member is a religious organization, to offer coverage for treatment of infertility in a manner inconsistent with that religious organization's religious and ethical principles.

For purposes of this subdivision, "subsidiary" of a specified corporation means a corporation more than 45 percent of the voting

power of which is owned directly, or indirectly through one or more subsidiaries, by the specified corporation.

(f) This section applies to every disability insurance policy which is issued, amended, or renewed to residents of this state regardless of the situs of the contract.

SEC. 3. Section 11512.28 of the Insurance Code is amended to read:

11512.28. (a) On and after January 1, 1990, every nonprofit hospital service plan contract which is issued, amended, or renewed that covers hospital, medical, or surgical expenses on a group basis, where the plan is not a health maintenance organization as defined in Section 1373.10 of the Health and Safety Code, shall offer coverage for the treatment of infertility, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group subscriber and the plan. Every plan shall communicate the availability of that coverage to all group contractholders and to all prospective group contractholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed physician and surgeon as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians and surgeons including, but not limited to, diagnosis, diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) On and after January 1, 1990, every nonprofit hospital service plan which is a health maintenance organization, as defined in Section 1373.10 of the Health and Safety Code, and which issues, renews, or amends a health care service plan contract that provides group coverage for hospital, medical, or surgical expenses shall offer the coverage specified in subdivision (a) to group contractholders with at least 20 employees to whom the plan is offered. The plan shall communicate the availability of the coverage to those group contractholders and prospective group contractholders with whom the plan is negotiating.

(d) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(e) Nothing in this section shall be construed to require any hospital service plan which is a subsidiary of an entity whose owner or corporate member is a religious organization to offer coverage for treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

For purposes of this subdivision, "subsidiary" of a specified corporation means a corporation more than 45 percent of the voting power of which is owned directly, or indirectly through one or more

subsidiaries, by the specified corporation.

(f) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(g) This section applies to every nonprofit hospital service plan contract which is issued, amended, or renewed to residents of this state regardless of the situs of the contract.

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 group coverage of infertility treatment is offered to residents of this state by certain nonprofit hospital service plans, health care service plans, and disability insurers which cover hospital, medical, or surgical expenses, and in order to prevent a health care service plan that is substantially sponsored by a religious organization from being required to offer any form of infertility treatment inconsistent with the religious or ethical principles of that religious organization, it is necessary that this act take effect immediately.

CHAPTER 831

An act to amend Sections 22231, 22232, and 22310 of the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 22231 of the Education Code is amended to read:

22231. The system may offer a tax-sheltered annuity plan to all employees of any state agency who are members of the State Teachers' Retirement System or any employee of a local public agency or political subdivision of this state which employs persons in positions requiring or allowing membership in the system. This plan may be operated either directly by the system or by one or more qualified third-party carriers which shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combinations thereof. The type and number of investment vehicles offered by the carriers shall be determined by the board. The features of plan design and operation shall be in accordance with that allowed by the applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code.

Section 770.3 of the Insurance Code shall not be applicable to the plan.

SEC. 2. Section 22232 of the Education Code is amended to read:

22232. (a) Any tax-sheltered annuity plan advertised, promoted, offered, or operated by the system, either directly or through one or more third-party carriers, shall provide for recovery of all costs and expenses of its own operation including, but not limited to, advertising, promotion, legal, accounting, recordkeeping, and investment costs and expenses and the plan shall not be subsidized, in any respect whatsoever, by the Teachers' Retirement Fund.

(b) The system shall not utilize its member mailing list for the purpose of transmitting information dedicated solely to advertising or marketing this program.

SEC. 3. Section 22310 of the Education Code is amended to read:

22310. (a) There is hereby established in the State Treasury a special trust fund known as the Teacher Tax-Sheltered Annuity Fund. There shall be deposited in that fund tax-sheltered annuity contributions together with interest earnings on the fund. All moneys in the fund are continuously appropriated to the board for disbursement for the purposes of the tax-sheltered annuity plan under this part.

(b) Return on investments of the fund shall be collected by the Treasurer and together with other moneys received for the Teacher Tax-Sheltered Annuity Fund shall be immediately deposited to the credit of that fund and reported forthwith to the system. Money in whatever form received directly by the system dedicated to the Teacher Tax-Sheltered Annuity Fund shall be deposited forthwith in the State Treasury to the credit of that fund.

(c) The board may provide by board rule for optional forms of payment from the Teacher Tax-Sheltered Annuity Fund.

(d) Disbursement of money from the Teacher Tax-Sheltered Annuity Fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds.

(e) Notwithstanding any other provision of this section, if the board elects to operate the plan through one or more third-party carriers, the tax-sheltered annuity contributions to the plan may be made directly from the employer to the carriers. All funds contributed shall be held by the carriers under custody and any return on investment shall be credited to plan participant accounts by the carrier. Under third-party carrier operation, the forms of payment and disbursement procedure shall be determined by the board.

CHAPTER 832

An act to amend Section 10242.5 of, and to add Article 8 (commencing with Section 9148) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of, the Government Code, relating to legislative oversight.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Article 8 (commencing with Section 9148) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 8. Legislative Oversight of State Board Formation

9148. Any state board proposed for creation by the Legislature on or after January 1, 1991, shall be subject to this article.

9148.2. For purposes of this article, "state board" means any administrative or regulatory board, commission, committee, council, association, or authority consisting of more than one person, whose members are appointed by the Governor, the Legislature, or both. For purposes of this article, "state board" does not include any commission created by the Legislature pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code.

9148.4. Prior to consideration by the Legislature of legislation creating a new state board, a plan for the establishment and operation of the proposed state board shall be developed by the author or sponsor of the legislation. The plan shall include, but not be limited to, all of the following:

(a) A description of the problem that the creation of the specific state board would address, including the specific evidence of need for the state to address the problem.

(b) The reasons why this proposed state board was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected. Alternatives that shall be considered include, but are not limited to, the following:

(1) No action taken to establish a state board.

(2) The use of a current state board or agency to address the problem, including any necessary changes to the mandate or composition of the existing state board or agency.

(3) The various levels of regulation or administration available to address the problem.

(4) Addressing the problem by federal or local agencies.

(c) The specific public benefit that would result from the establishment of the proposed state board, the specific manner in

which the proposed state board would achieve this benefit, and the specific standards of performance which shall be used in reviewing the subsequent operation of the board.

(d) The specific source or sources of revenue and funding to be utilized by the proposed state board in achieving its mandate.

(e) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard.

9148.6. Prior to consideration by the Legislature of legislation creating a new state board, which is advisory only, a plan for the establishment and operation of the proposed state board shall be developed by the author or sponsor of the legislation. The plan shall include, but not be limited to, all of the following:

(a) A description of the problem that the proposed advisory state board would address.

(b) A listing of those currently established state advisory and administrative entities addressing the same or similar problems.

(c) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard.

9148.8. (a) The Committee on Rules of either house of the Legislature, acting pursuant to a request from the chairperson of the appropriate policy committee, may direct the Joint Legislative Budget Committee to evaluate a plan prepared pursuant to Section 9148.4 or 9148.6.

(b) Evaluations prepared by the Joint Legislative Budget Committee pursuant to this section shall be provided to the respective Committee on Rules and the policy and fiscal committees of the Legislature pursuant to rules adopted by each committee for this purpose.

9148.10. Any state board under this article shall be subject to the following:

(a) The Joint Legislative Budget Committee shall establish criteria and review processes for the operational review of each state board. The criteria and review processes shall include, but not be limited to, all of the following:

(1) An assessment of whether the initial problem or condition which led to establishment of the state board being reviewed still exists to such a degree as to require the continued existence of that agency.

(2) Assessment of other similar conditions which have arisen and the manner in which they have been addressed.

(3) An assessment of the agency's current and original scope of authority and functions, and the justification for any change.

(4) A full cost-benefit analysis of the state board's operation on a year-by-year basis since its establishment or prior review under this article.

(b) The committee shall identify all state boards subject to review under this article and establish a schedule for review of these state boards. In no case shall any state board be allowed to operate for more than eight years after the initial date of its enactment without being subject to review under this article.

SEC. 2. Section 10242.5 of the Government Code is amended to read:

10242.5. (a) The Legislative Counsel shall prepare and publish quarterly a report that lists all reports that state and local agencies are required or requested by law to prepare and file with the Governor or the Legislature, or both, in the future or within the preceding year. The list shall include all of the following information:

(1) The name of the agency that is required or requested to prepare and file the report.

(2) A brief description of the subject of the report.

(3) The date on which the report is to be completed and filed.

(4) The date on which the report was completed and filed.

(b) Each report by the Legislative Counsel prepared pursuant to subdivision (a) shall be sent to each Member of the Legislature and shall be available to the public. The Legislative Counsel may charge a fee that does not exceed the direct cost of printing the report.

(c) Each state and local agency that is required or requested by law to prepare a report described in subdivision (a) shall file a copy of the report with the Legislative Counsel.

(d) As used in this section,

(1) "Agency" includes any city, county, special district, department, board, bureau, or commission, including any task force or other similar body that is created by statute or resolution. "Agency" does not include the University of California.

(2) "Report" includes any study or audit.

SEC. 3. The Legislature finds and declares the following:

(a) California's multilevel, complex governmental structure today contains more than 400 boards, commissions, authorities, associations, councils, and committees.

(b) These agencies include administrative agencies, advisory bodies, and regulatory agencies.

(c) These agencies have been established without a systematic assessment of need or structure, and without any method of periodically reviewing their effectiveness or utility.

(d) As a result, the Legislature and residents of California cannot be assured that the most appropriate structure has been created to address perceived short- and long-term concerns and needs.

CHAPTER 833

An act to amend Section 14142 of, and to add Section 14142.5 to, the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 14142 of the Welfare and Institutions Code is amended to read:

14142. Notwithstanding Section 14005.4 or 14005.7, a person who is otherwise eligible for dialysis and related services under Section 14005.4 or 14005.7, except for his or her income and resource eligibility, is eligible for dialysis and related services under Medi-Cal pursuant to this article, as follows:

(a) A person in a family unit with a net worth of less than five thousand dollars ($5,000) shall not be liable to pay for dialysis and related services.

(b) A person in a family unit with a net worth of five thousand dollars ($5,000) or above shall pay 2 percent of the cost of dialysis and related services for each five thousand dollars ($5,000) of net worth, up to a maximum net worth of two hundred fifty thousand dollars ($250,000). Persons in a family unit with a net worth above two hundred fifty thousand dollars ($250,000) shall not be eligible to receive dialysis under Medi-Cal.

SEC. 2. Section 14142.5 is added to the Welfare and Institutions Code, to read:

14142.5. Notwithstanding Section 14005.4 or 14005.7, a person requiring parenteral hyperalimentation and related services is eligible for these services under Medi-Cal pursuant to this section, as follows:

(a) A person in a family unit with a net worth of less than five thousand dollars ($5,000) shall not be liable to pay for parenteral hyperalimentation and related services.

(b) A person in a family unit with a net worth of five thousand dollars ($5,000) or above shall pay 2 percent of the cost of parenteral hyperalimentation and related services for each five thousand dollars ($5,000) of net worth, up to a maximum net worth of two hundred fifty thousand dollars ($250,000). Persons in a family unit with a net worth above two hundred fifty thousand dollars ($250,000) shall not be eligible to receive parenteral hyperalimentation under Medi-Cal.

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.

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 timely parenteral hyperalimentation services to persons and to avoid their needless hospitalization, it is necessary that this act take effect immediately.

CHAPTER 834

An act to amend Sections 10242 and 10245 of the Business and Professions Code, relating to real property.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 10242 of the Business and Professions Code is amended to read:

10242. The maximum amount of expenses, charges and interest to be paid by a borrower with respect to any loan subject to this article shall be as follows:

(a) The maximum amount of all costs and expenses referred to in subdivision (a) of Section 10241, exclusive of actual title charges and recording fees, shall not exceed 5 percent of the principal amount of the loan or three hundred ninety dollars ($390), whichever is greater but in no event to exceed seven hundred dollars ($700), provided that in no event shall said maximum amount exceed actual costs and expenses paid, incurred or reasonably earned.

(b) The maximum amount of the charges referred to in subdivision (b) of Section 10241 shall not exceed the following amounts:

(1) In the case of a loan secured directly or collaterally, in whole or in part by a first trust deed, 5 percent of the principal amount of the loan where the term of the loan is a period of less than three years and 10 percent where the term is a period of three years or more.

(2) In the case of a loan secured directly or collaterally by a trust deed other than a first trust deed, 5 percent of the principal amount of the loan where the term of the loan is a period of less than two years, 10 percent where the term is a period of two years but less than

three years, and 15 percent where the term is a period of three years or more.

(3) With respect to a further advance on a note, the charges shall not exceed the charges for an original loan in the same amount as the further advance and made for a term equal to the remaining term of the note on which the further advance is being made, including any extension thereof.

(c) No interest may be charged with respect to any period prior to the date that the proceeds of the loan are made available to the borrower or are deposited in escrow.

SEC. 2. 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 thirty thousand dollars ($30,000) or more, or to any bona fide loan secured directly or collaterally by any lien junior thereto, the principal of which is twenty thousand dollars ($20,000) or more.

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 835

An act to amend and repeal Section 1170.1 of the Penal Code, relating to sentencing.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1170.1 of the Penal Code, as amended by Chapter 41 of the Statutes of 1990, is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the

subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may

exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping as defined in Section 207, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 2. Section 1170.1 of the Penal Code, as amended by Chapter 41 of the Statutes of 1990, is repealed.

SEC. 3. Section 2 of this bill, which repeals Section 1170.1 of the Penal Code, shall only become operative if Senate Bill 25 of the 1989–90 Regular Session of the Legislature is also chaptered and becomes operative on January 1, 1992. If Senate Bill 25 is chaptered, Section 1170.1 of the Penal Code, as amended by Section 1 of this act, shall remain operative only until the operative date of Senate Bill 25, at which time Section 2 of this act shall become operative, and Section 1 of this act shall not be operative.

CHAPTER 836

An act to amend Section 464 of, and to add Section 465 to the Water Code, relating to water.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 464 of the Water Code is amended to read:

464. The department shall make findings and recommendations concerning its studies, investigations, and assistance to local agencies and public utilities providing water service, under this article and shall report thereon to the Legislature from time to time.

SEC. 2. Section 465 is added to the Water Code, to read:

465. The department may assist local agencies and public utilities providing water service in applying for, and in obtaining approval of, federal and state funding and permits for cost-effective water

reclamation projects and shall confer and cooperate with the board during the application and approval process.

CHAPTER 837

An act to amend Sections 4510 and 5705.1 of, and to add Section 14115.8 to, the Welfare and Institutions Code, relating to mental health programs.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 4510 of the Welfare and Institutions Code is amended to read:

4510. The State Department of Developmental Services and the State Department of Mental Health shall jointly develop and implement a statewide program for encouraging the establishment of sufficient numbers and types of living arrangements, both in communities and state hospitals, as necessary to meet the needs of persons served by those departments. The departments shall consult with the following organizations in the development of procedures pursuant to this section:

(1) The League of California Cities, the County Supervisors Association of California, and representatives of other local agencies.

(2) Organizations or advocates for clients receiving services in residential care services.

(3) Providers of residential care services.

The State Department of Developmental Services shall prepare and transmit to the Legislature on or before March 31 of each year, commencing in 1981, an annual report detailing obstacles to assuring sufficient numbers of living arrangements for persons served by the department, detailing obstacles to providing an adequate quality of care and services to persons served by the department who reside in residential facilities, and containing appropriate recommendations for legislative action.

SEC. 2. Section 5705.1 of the Welfare and Institutions Code is amended to read:

5705.1. (a) The Director of Mental Health shall establish the amount of reimbursement for 24-hour hospital services specified in the approved county Short-Doyle plans.

(b) In establishing the amount of reimbursement for 24-hour hospital services, no amount shall exceed the lower of each individual provider's actual cost or 125 percent of the statewide weighted average of the cost of services as reflected in the most recently completed cost reports. This shall not prohibit the adjustment of the rates for cost-of-living increases appropriated by the Legislature.

This subdivision shall not apply to prepaid health plans or in those cases where the county and the state or the county and the provider have entered into a negotiated net amount contract in accordance with Section 5705.2.

(c) The Director of Mental Health, subject to the availability of funds, may approve a waiver of the 125 percent limitation set forth in subdivision (b) requested by the board of supervisors of a county if the county demonstrates that the imposition of the 125 percent limitation will result in a substantial inability to provide mental health services.

(d) Notwithstanding the provisions of this section, in the event that a health facility has entered into a negotiated rate agreement pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3 of Division 9, the facility's rates shall be governed by that agreement.

SEC. 3. Section 14115.8 is added to the Welfare and Institutions Code, to read:

14115.8. Notwithstanding subdivision (a) of Section 14115, or any other provision of law, Short-Doyle/Medi-Cal claims for mental health services provided to Medi-Cal beneficiaries shall be submitted not more than two months after the month in which the service is rendered.

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 838

An act to amend Section 226.3 of the Labor Code, relating to employment.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 226.3 of the Labor Code is amended to read:

226.3. Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty

dollars ($250) per employee for the first violation and one thousand dollars ($1,000) per employee for each subsequent violation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

CHAPTER 839

An act to add and repeal Section 26637.5 to the Health and Safety Code, relating to health.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. The Legislature finds and declares that printed material on labels and notices packaged with nonprescription drugs may be difficult to read. This difficulty presents a potential danger to the health and safety of customers, therefore, every effort should be made to print these materials in a manner which makes them more comprehensible.

SEC. 2. Section 26637.5 is added to the Health and Safety Code, to read:

26637.5. (a) Manufacturers of nonprescription drugs which are sold in this state shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense. The Nonprescription Drug Manufacturers Association shall report on a quarterly basis to, and seek advice periodically from, the department and consumer representatives, health professionals, and drug manufacturers regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(b) The director shall report to the Legislature on or before December 31, 1993, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

CHAPTER 840

An act to amend Sections 19057.1 and 20607 of, and to add Section 19057.4 to, the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 19057.1 of the Government Code is amended to read:

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

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

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

Fractional examination scores shall be provided to, and utilized by, the California Highway Patrol for its peace officer classes.

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

SEC. 2. Section 19057.4 is added to the Government Code, to read:

19057.4. Notwithstanding Section 19057, for positions in classes which are designated by the board as supervisory and not professional, scientific, or administrative, and are not examined for on an open basis, there shall be certified to the appointing power the names and addresses of all those eligible whose scores, at the time of certification, represent the highest rank on the employment list for the class, and who have indicated their willingness to accept

appointment under the conditions of employment specified.

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

If the highest rank contains fewer than three eligibles, then the next highest rank shall be certified until a minimum of three eligibles willing to accept appointment under the conditions specified are certified. If fewer than three names 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 three names are certified. If there are fewer than three names available for certification, and the appointing authority does not choose to appoint from among these, the appointing authority may demand certification of three names. In that case, examinations shall be conducted until at least three names may be certified by the procedure described in this section, and the appointing authority shall fill the position by appointment of one of the persons certified.

Fractional examination scores shall be provided to, and utilized by, the California Highway Patrol for its peace officer classes.

SEC. 3. Section 20607 of the Government Code is amended to read:

20607. (a) The normal rate of contribution for state peace officer/firefighter members and for local safety members subject to Section 21252.02 shall be 8 percent of the compensation in excess of two hundred thirty-eight dollars ($238) per month paid those members.

(b) This subdivision shall apply only to a city with a population in excess of 300,000 in a county of the eighth class, as defined by Sections 28020 and 28029, as amended by Chapter 1204 of the Statutes of 1971, which, prior to June 30, 1991, amends its contract to provide for the transfer of all or part of the safety members of an existing local retirement system to this system. Subdivision (a) shall not apply to a contracting agency which so elects by amendment to its contract made in the manner prescribed for approval of contracts by express provision in the contract. If the election is so made, the normal rate of contribution for local safety members of that contracting agency subject to Section 21252.02 shall, notwithstanding Section 20605.55, be 9 percent of compensation paid those members.

(c) 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 (29 U.S.C. Sec. 201 et seq.) 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. 4. The State Personnel Board shall report to the Legislature and the Governor, not later than November 15, 1992, on the impact of one rank certification on the appointment of minorities, women, and persons with disabilities.

SEC. 5. Sections 1 and 2 shall be applicable to names certified from employment lists on or after January 1, 1991, even if the examination from which the names are certified has been given prior to January 1, 1991.

SEC. 6. (a) Notwithstanding Section 3517.6 of the Government Code, the provisions of any addendum to any memorandum of understanding that requires the expenditure of funds shall become effective even if the provisions of the addendum to the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

(b) This is an addendum to the memorandum of understanding approved by the Legislature in Chapter 906 of the Statutes of 1988. The provisions of the addendum to the existing memorandum of understanding have been prepared pursuant to Section 3517.5 of the Government Code. The addendum was entered into by the state employer and the California Union of Safety Employees on June 26, 1990. The addendum requires the expenditure of funds, and is hereby approved by the purposes of Section 3517.6 of the Government Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 1990–91 fiscal year, and so facilitate the orderly administration of state government at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 841

An act to amend Sections 51203, 51222, 51243, and 66474.4 of, and to repeal Section 51202 of, and to repeal and add Section 51243.5 of, the Government Code, relating to land conservation contracts.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 51202 of the Government Code is repealed.

SEC. 2. Section 51203 of the Government Code is amended to

read:

51203. The current fair market valuations referred to in Section 51283, upon the request of either of the parties to the contract, shall be subject to appeal to the county board pursuant to Section 1604 of the Revenue and Taxation Code.

SEC. 3. Section 51222 of the Government Code is amended to read:

51222. The Legislature further declares that it is in the public interest for local officials and landowners to retain agricultural lands which are subject to contracts entered into pursuant to this act in parcels large enough to sustain agricultural uses permitted under the contracts. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land, or (2) at least 40 acres in size in the case of land which is not prime agricultural land.

SEC. 4. Section 51243 of the Government Code is amended to read:

51243. Every contract shall:

(a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.

(b) Shall be binding upon, and inure to the benefit of, all successors in interest of the owner. Whenever land under a contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner in the original contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of the divided land. On the annexation by a city of any land under contract with a county, the city shall succeed to all rights, duties and powers of the county under the contract. The amendments made to this section by Assembly Bill No. 2764 of the 1989–90 Regular Session shall not apply to any executed contract for which a valid protest was filed in accordance with applicable requirements prior to January 1, 1991.

SEC. 5. Section 51243.5 of the Government Code is repealed.

SEC. 6. Section 51243.5 is added to the Government Code, to read:

51243.5. For property which was within one mile of a city boundary when a contract was executed pursuant to this article and for which the contract was executed prior to January 1, 1991, it shall be conclusively presumed that no protest was filed by the city unless there is a record of the filing of the protest and the protest identifies the affected contract and the subject parcel. It shall be conclusively presumed that required notice was given before the execution of the contract.

SEC. 7. Section 66474.4 of the Government Code is amended to read:

66474.4. (a) The legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it finds that the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) and that the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use. For purposes of this section, land shall be presumed to be in parcels too small to sustain their agricultural use if the land is (1) less than 10 acres in size in the case of prime agricultural land, or (2) less than 40 acres in size in the case of land which is not prime agricultural land. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land, or (2) at least 40 acres in size in the case of land which is not prime agricultural land.

(b) A legislative body may approve a subdivision with parcels smaller than those specified in this section if the legislative body makes either of the following findings:

(1) The parcels can nevertheless sustain an agricultural use permitted under the contract, or are subject to a written agreement for joint management pursuant to Section 51230.1, provided that the parcels which are jointly managed total at least 10 acres in size in the case of prime agricultural land or 40 acres in size in the case of land which is not prime agricultural land.

(2) One of the parcels contains a residence and is subject to Section 428 of the Revenue and Taxation Code; the residence has existed on the property for at least five years; the landowner has owned the parcels for at least 10 years; and the remaining parcels shown on the map are at least 10 acres in size if the land is prime agricultural land, or at least 40 acres in size if the land is not prime agricultural land.

(c) No other homesite parcels as described in paragraph (2) of subdivision (b) may be created on any remaining parcels under contract for at least 10 years following the creation of a homesite parcel pursuant to this section.

(d) This section shall not apply to land which is subject to a contract when any of the following has occurred:

(1) A local agency formation commission has approved the annexation of the land to a city and the city will not succeed to the contract as provided in Sections 51243 and 51243.5.

(2) Written notice of nonrenewal of the contract has been served prior to March 7, 1985, as provided in Section 51245.

(3) Written notice of nonrenewal of the contract has been served on or after March 7, 1985, as provided in Section 51245, and, as a result of that notice, there are no more than three years remaining in the term of the contract.

(4) The board or council has granted tentative approval for cancellation of the contract as provided in Section 51282.

(e) This section shall not be construed as limiting the power of legislative bodies to establish minimum parcel sizes larger than those specified in subdivision (a).

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 842

An act to amend Section 1785.10 of, and to add Sections 1785.19 and 1785.19.5 to, the Civil Code, relating to consumer credit reporting agencies.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 1785.10 of the Civil Code is amended to read:

1785.10. Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request.

Every consumer reporting agency, upon contact by a consumer by phone, mail, or in person regarding information which may be contained in the agency files regarding that consumer, shall promptly advise the consumer of his or her rights under Sections 1785.19 and 1785.19.5, and of the obligation of the agency to provide disclosure of the files in person, by mail, or by telephone pursuant to Section 1785.15, including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code used, if the consumer so requests such a copy. The disclosure shall be provided in the manner selected by the consumer.

The agency shall determine the applicability of subdivision (1) of Section 1785.17 and, where applicable, the agency shall inform the

consumer of the rights under that section.

(a) All items of information shall be available for inspection, including the sources of information.

(b) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(1) For employment purposes within the two-year period preceding the request.

(2) For any other purpose within the six-month period preceding the request.

SEC. 2. Section 1785.19 is added to the Civil Code, to read:

1785.19. (a) In addition to any other remedy provided by law, a consumer may bring an action for a civil penalty, not to exceed two thousand five hundred dollars ($2,500), against any of the following:

(1) A person who knowingly and willfully obtains access to a file other than as provided in Section 1785.11.

(2) Any person who knowingly and willfully obtains data from a file other than as provided in Section 1785.11.

(3) A person who uses the data received from a file in a manner contrary to an agreement with the consumer credit reporting agency.

Such an action may also be brought by the person or entity responsible for the file accessed. This remedy is in addition to any other remedy which may exist.

(b) If a plaintiff prevails in an action under subdivision (a) he or she shall be awarded the civil penalty, costs, and reasonable attorney fees.

SEC. 3. Section 1785.19.5 is added to the Civil Code, to read:

1785.19.5. Every consumer credit reporting agency, upon written request and the furnishing of sufficient identification to identify the consumer and the subject file, shall create reasonable procedures to prevent a consumer credit report or information from a consumer's file from being provided to any third party for marketing purposes or for any offer of credit not requested by the consumer. This section does not apply to the use of information by a credit grantor for purposes related to an existing credit relationship.

CHAPTER 843

An act to add Article 2.9 (commencing with Section 65890.1) to Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Article 2.9 (commencing with Section 65890.1) is added to Chapter 4 of Division 1 of Title 7 of the Government Code, to read:

Article 2.9. Guidebook for Jobs-Housing Balance

65890.1. The Legislature finds and declares that:

(a) State land use patterns should be encouraged that balance the location of employment-generating uses with residential uses so that employment-related commuting is minimized.

(b) Balance in employment and residential land use patterns reduces traffic congestion and may contribute to improvement of air quality in urban areas.

(c) Balancing of employment-generating land uses and residential land uses improves economic and housing opportunities and reduces loss of economic productivity caused by transportation delay.

(d) The attainment of a more balanced land use pattern requires the cooperation of government agencies with the private sector to assure that public and private decisions affecting land use take into consideration the need to seek balance in the location of employment-generating land uses and residential land uses.

(e) Local agencies and state agencies should cooperate to facilitate the balancing of employment-generating land uses and residential land uses and provisions of transportation to serve these uses.

(f) Local governments have the primary responsibility to plan for local land use patterns, within the parameters established by state law to achieve statewide needs.

(g) Housing must be provided for the estimated 3 million new workers and their families expected to be added to the California economy in the 1990's.

(h) It is the intent of the Legislature to move toward the goal that every California worker have available the opportunity to reside close to his or her jobsite.

65890.3. The Department of Housing and Community Development shall prepare a guidebook for use by cities, counties, councils of government, state agencies, and the private sector in the

planning and development of a housing supply to meet the need created by employment growth. The guidebook shall be prepared in time for use following the availability of the 1990 Census of Population and Housing.

65890.5. (a) The guidebook shall include the following:

(1) Methodologies for measuring the balance of jobs and housing.

(2) Methodologies for analysis of the projected needed housing supply to serve projected employment growth.

(3) Methodologies to encourage the balance of jobs and housing.

(4) Incentives which local, regional, and state agencies may offer to the private sector to encourage developments and design which will facilitate an improved balance between employment generating land use and residential land use.

(5) Methodologies cities and counties may use to analyze trip generation and vehicle miles traveled to and from employment centers.

(6) Methodologies cities and counties may use to achieve more efficient use of transportation facilities serving major employment centers.

(7) Descriptions of successful and unsuccessful efforts by cities or counties to move toward improved jobs-housing balance.

(b) The guidebook shall seek to describe and evaluate the various tools available to local, regional, and state governments to measure, evaluate, and improve the balance of jobs and housing and to mitigate the undesirable effects of any imbalance between jobs and housing. The guidebook shall describe efforts by cities, counties, and regional agencies to improve the balance of jobs and housing.

(c) The department shall consult with interested parties and organizations such as academic institutions, environmental groups, businesses, labor unions, real estate groups, housing advocacy groups, cities, counties, and regional agencies. The final guidebook shall be completed no later than December 31, 1993.

(d) Within two years of final publication of the guidebook, the Assembly Office of Research shall complete a study of the effectiveness of the guidebook as a decisionmaking tool by public agencies and the private sector to facilitate improved jobs-housing balance. The study shall include the office's recommendations for legislation needed to improve the effectiveness of decisionmaking as it relates to achieving jobs-housing balance, if any.

CHAPTER 844

An act to amend Section 650.2 of the Business and Professions Code, relating to dentistry.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 650.2 of the Business and Professions Code is amended to read:

650.2. Notwithstanding the provisions of Section 650 or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 or any other person, to participate in or operate a group advertising and referral service for dentists so long as:

(a) The patient referrals by the service result from patient-initiated responses to service advertising.

(b) The service advertises, if at all, in conformity with Section 651.

(c) The service does not employ a solicitor within the meaning of subdivision (j) of Section 1680.

(d) The service does not impose a fee on the member dentists dependent upon the number of referrals or amount of professional fees paid by the patient to the dentist.

(e) Participating dentists charge no more than their usual and customary fees to any patient referred.

(f) The service registers with the Board of Dental Examiners of California, providing its name and address.

(g) The service files with the Board of Dental Examiners of California a copy of the standard form contract that regulates its relationship with member dentists, which contract shall be confidential and not open to public inspection.

(h) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more dentists, the service discloses that fact in all public communications, including, but not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

The Board of Dental Examiners of California may adopt regulations necessary to enforce and administer this section.

The Board of Dental Examiners of California may petition the superior court of any county for the issuance of an injunction restraining any conduct which constitutes a violation of this section.

It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for dentists without providing its name and address to the Board of Dental Examiners of California.

It is the intent of the Legislature in enacting this section not to

otherwise affect the prohibitions provided in Section 650. The Legislature intends to allow the pooling of resources by dentists for the purposes of advertising.

This section shall not be construed in any manner which would authorize a referral service to engage in the practice of dentistry.

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 845

An act to add Section 4024.5 to the Welfare and Institutions Code, relating to health.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 4024.5 is added to the Welfare and Institutions Code, to read:

4024.5. (a) The State Department of Mental Health and the State Department of Alcohol and Drug Programs, jointly, shall develop a plan, by July 1, 1994, to appropriately combine funding from both departments for the treatment of persons with multiple diagnoses.

(b) For purposes of this section, "multiple diagnoses" means diagnoses of chronic mental illness together with substance abuse of either illegal or legal drugs, including alcohol, or both.

CHAPTER 846

An act to amend Sections 17054, 17069, 18551.1, 18815, 19053.1, 19062.13, 19063, and 19409 of, to add Sections 18689.5 and 25937 to, and to add and repeal Section 17054.6 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 17054 of the Revenue and Taxation Code is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under either Section 17041 or 17048.

(a) In the case of a single individual, a head of household, or a married individual making a separate return, a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(b) In the case of a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred two dollars ($102) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and one hundred four dollars ($104) for taxable years beginning on or after January 1, 1988. If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(d) Except as provided in paragraph (2), a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for each dependent (as defined in Section 17056)—

(1) For whom an exemption is allowable under Section 151 (c) of the Internal Revenue Code (relating to additional exemption for dependents).

(2) No credit for a dependent shall be allowed to a noncustodial parent if both of the following apply:

(A) A credit for the dependent would not be allowed except for the provisions of Section 152(e)(2) or 152(e)(4) of the Internal Revenue Code, relating to exemptions claimed by noncustodial

parents.

(B) The custodial parent files a return as head of household for the same taxable year.

(e) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either: his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year shall be zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. 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 of the prior calendar year 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 immediately preceding taxable year credits by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (b) shall be twice the credit provided in subdivision (a).

(j) The amendments made to this section by the act adding this subdivision shall be applied only in the computation of taxes for taxable years beginning on or after January 1, 1990.

SEC. 2. Section 17054.6 is added to the Revenue and Taxation Code, to read:

17054.6. (a) For taxable years beginning on or after January 1, 1990, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) of a qualified individual, an amount equal to the amount prescribed in subdivision (a) of Section 17054 and computed in accordance with subdivision (i) of Section 17054.

(b) For purposes of this section, a "qualified individual" means an individual who meets both of the following:

(1) An individual who for the taxable year qualifies as a head of household under Sections 2(b) and (c) of the Internal Revenue Code.

(2) An individual who for the taxable year is not eligible to claim a credit as provided for in subdivision (d) of Section 17054 for the person for whom the household is maintained (as required by Section 2(b)(1) of the Internal Revenue Code).

(c) This section shall remain in effect only until December 1, 1992, and as of that date is repealed.

SEC. 3. Section 17069 of the Revenue and Taxation Code is amended to read:

17069. (a) A low-income tax credit at the percentage provided in subdivision (b) or (c) shall be allowed against the amount of computational tax (as defined in subdivision (i)), with respect to taxable years beginning after December 31, 1984.

(b) In the case of a single person, a married person filing a separate return, or a head of household, the low-income tax credit percentage shall be as follows:

If the adjusted gross income is:	The percentage of credit is:
$5,450 or less	100%
Over $5,450, but not over $6,300	80%
Over $6,300, but not over $7,150	60%
Over $7,150, but not over $8,000	40%
Over $8,000, but not over $8,850	20%
Over $8,850	0%

(c) In the case of a married couple filing a joint return or a surviving spouse, the low-income tax credit percentage shall be as follows:

If the adjusted gross income is:	The percentage of credit is:
$10,900 or less	100%
Over $10,900, but not over $12,600	80%
Over $12,600, but not over $14,300	60%
Over $14,300, but not over $16,000	40%
Over $16,000, but not over $17,700	20%
Over $17,700	0%

(d) The credit provided by this section shall not be available to any of the following:

(1) Any taxpayer required to pay the alternative minimum tax imposed in Chapter 2.1 (commencing with Section 17062), during the taxable year.

(2) Trusts or estates subject to tax under this part.

(3) Nonresidents as of the close of the taxable year for which the credit is claimed.

(4) Any taxpayer claiming a credit pursuant to Section 17052.5, 17052.7, 17052.8, or 17052.11.

(e) For the purposes of this section, "adjusted gross income of a nonresident" means gross income from sources both within and without this state less the deductions allowed by Section 17072.

(f) If, after the tax credit provided by this section is claimed, the Franchise Tax Board determines that the taxpayer's tax liability is more or less than the amount shown on the return, a corresponding adjustment shall be made by the Franchise Tax Board for the low-income tax credit.

(g) For each taxable year beginning on or after January 1, 1986, the Franchise Tax Board shall recompute the adjusted gross income brackets prescribed in subdivisions (b) and (c). That computation shall be made as follows:

(1) The Franchise Tax Board shall compute an inflation adjustment factor by adding 100 percent to that portion of the percentage change figure which is furnished pursuant to paragraph (1) of subdivision (h) of Section 17041 and dividing the result by 100.

(2) The Franchise Tax Board shall multiply the preceding taxable year adjusted gross income brackets prescribed in subdivisions (b) and (c) by the inflation adjustment factor determined in paragraph (1), and round off each bracket to the nearest ten dollars ($10).

(h) The credit computed pursuant to this section shall be rounded off to the nearest dollar.

(i) For purposes of this section, "computational tax" means the tax imposed under either Section 17041 or 17048, minus all other credits for which the taxpayer may be eligible except credits allowed by Section 17053.5 (relating to renters), Section 17061 (relating to withheld SDI worker contributions), and Section 18551.1 (relating to amounts withheld).

(j) The Franchise Tax Board may prescribe credit tables to reflect the credit computation provided by this section.

(k) 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. 4. *Section 18551.1 of the Revenue and Taxation Code is* amended to read:

18551.1. (a) For purposes of this part, the amount withheld under Section 18805 or 18807 of this code and Section 13020 of the Unemployment Insurance Code during any calendar year shall be allowed to the recipient of the income as a credit against the tax

imposed by this part for the taxable year with respect to which such amount was withheld.

(b) In the case of a partnership filing a group return as agent for electing nonresident partners in accordance with Section 18408.5, for purposes of this part, the amount withheld under Section 18805 or 18807 during any taxable year shall be allowed as a credit attributable to the partnership on the group return for the taxable year with respect to which that amount was withheld.

(c) For purposes of Section 19053, any tax actually deducted and withheld during any calendar year under Section 18805 or 18807 of this code and Section 13020 of the Unemployment Insurance Code shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of the taxable year with respect to which such tax is allowable as a credit under subdivision (a) or (b). For purposes of Sections 19053 and 19062, any amount paid as estimated income tax under Section 18682 of this code or Section 13043 of the Unemployment Insurance Code for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Section 18401 for such taxable year (determined without regard to any extension of time for filing such return).

(d) Notwithstanding subdivision (c), for purposes of Section 19053 with respect to any tax deducted and withheld under Section 18805 or 18807 of this code or Section 13020 of the Unemployment Insurance Code—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to an amount paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(e) If any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of estimated income tax, in accordance with Section 18557, for the succeeding taxable year and no claim for credit or refund of that overpayment shall be allowed for the taxable year in which the overpayment arises.

SEC. 5. Section 18689.5 is added to the Revenue and Taxation Code, to read:

18689.5. The provisions of Section 6657 of the Internal Revenue Code, relating to bad checks, shall apply.

SEC. 6. Section 18815 of the Revenue and Taxation Code, as amended by Section 4 of Chapter 464 of the Statutes of 1990, is amended to read:

18815. (a) Every person required to deduct and withhold any tax is hereby made liable for such tax, to the extent provided by this section and, insofar as they are not inconsistent with the provisions

of this article, all the provisions of this part relating to penalties, interest, assessment, and collections shall apply to persons subject to the provisions of this part, and for these purposes any amount required to be deducted and paid to the Franchise Tax Board under Section 18805 or 18807 shall be considered the tax of the person. Any person who fails to withhold from any payments any amount required to be withheld under Section 18805 or 18807 is liable for the amount withheld or the amount of taxes due from the taxpayer to whom the payments are made but not in excess of the amount required to be withheld, whichever is more, unless it is shown that the failure to withhold is due to reasonable cause.

(b) If any amount required to be withheld under Section 18805 or 18807 is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19269, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) The amount of tax required to be deducted and withheld under Section 18805 or 18807 shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by this part.

(e) This section shall remain in effect only until January 1, 1991, and as of that date is repealed.

SEC. 6.5. Section 18815 of the Revenue and Taxation Code as added by Section 5 of Chapter 464 of the Statutes of 1990, is amended to read:

18815. (a) Every person required to deduct and withhold any tax is hereby made liable for such tax, to the extent provided by this section and, insofar as they are not inconsistent with the provisions of this article, all the provisions of this part relating to penalties, interest, assessment, and collections shall apply to persons subject to the provisions of this part, and for these purposes any amount required to be deducted and paid to the Franchise Tax Board under Section 18805 or 18807 shall be considered the tax of the person. Any person who fails to withhold from any payments any amount required to be withheld under Section 18805 or 18807 is liable for the amount withheld or the amount of taxes due from the taxpayer to whom the payments are made but not in excess of the amount required to be withheld, whichever is more, unless it is shown that the failure to withhold is due to reasonable cause.

(b) If any amount required to be withheld under Section 18805 or 18807 is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19269, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to

this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) Notwithstanding any other provision in this section, unless it is shown that the failure to withhold is due to reasonable cause, whenever any transferee is required to withhold any amount pursuant to subdivision (d) of Section 18805, the transferee is liable for the greater of the following amounts for failure to withhold only after the transferee, as specified, is notified in writing of the requirements under subdivision (d) of Section 18805:

(1) Five hundred dollars ($500).

(2) Ten percent of the amount required to be withheld under subdivision (d) of Section 18805.

(e) (1) Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person shall be liable for the amount specified in subdivision (c), when written notification of the withholding requirements of subdivision (d) of Section 18805 is not provided to the transferee and the California real property disposition is subject to withholding under subdivision (d) of Section 18805.

(2) The real estate escrow person shall not be liable under this subdivision, if the tax due as a result of the disposition of California real property is paid by the original or extended due date of the transferor's return for the taxable year in which the disposition occurred.

(3) The real estate escrow person and the transferee shall not be liable under subdivisions (c) and (d), if the failure to withhold is the result of the real estate escrow person's reliance, based on good faith and on all the information of which he or she has knowledge, upon a written affidavit executed by the transferor that the transferor will not instruct escrow to disburse the transaction's proceeds outside the boundaries of this state, nor make use of a financial intermediary within the meaning of subdivision (d) of Section 18805.

(4) Any transferor who for the purpose of avoiding the withholding requirements of subdivision (d) of Section 18805 knowingly files a false affidavit pursuant to this subdivision shall be liable for twice the amount specified in subdivision (c).

(5) The real estate escrow person shall not be liable under this subdivision if the disposition of California real property occurs prior to July 1, 1991.

(f) The amount of tax required to be deducted and withheld under Section 18805 or 18807 shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by this part.

(g) This section shall become operative on January 1, 1991.

SEC. 7. Section 19053.1 of the Revenue and Taxation Code is amended to read:

19053.1. For purposes of Section 19053, a return filed within four years from the last day prescribed for filing the return showing a

credit for (a) tax withheld under Section 18805 or 18807 of this code or Section 13020 of the Unemployment Insurance Code or (b) estimated tax paid pursuant to Section 18682 in excess of the tax due, shall be considered a claim for refund of such excess if the amount thereof is more than one dollar ($1). No refund of tax withheld or estimated tax paid shall be allowed to an employee or taxpayer who fails to file a return for the taxable year in respect of which the tax withheld or estimated tax was allowable as a credit.

SEC. 8. Section 19062.13 of the Revenue and Taxation Code is amended to read:

19062.13. Any action of the Franchise Tax Board in refunding the excess of tax withheld under Section 18805 or 18807 or estimated tax paid pursuant to Section 18682 or any action of the Employment Development Department in refunding to the employer the excess tax withheld under Section 13020 of the Unemployment Insurance Code shall not constitute a determination of the correctness of the return of the taxpayer for purposes of this part.

SEC. 9. Section 19063 of the Revenue and Taxation Code is amended to read:

19063. In the case of an overpayment of tax imposed by Section 18805 or 18807, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent. No interest shall be allowed on the overpayment.

SEC. 10. Section 19409 of the Revenue and Taxation Code is amended to read:

19409. Any person who, with or without intent to evade, fails to withhold, pursuant to Section 18805 or 18807, or pay over any tax withheld, is guilty of a misdemeanor, and, upon conviction shall be fined an amount not to exceed one thousand dollars ($1,000) or imprisoned for not more than one year, or both, at the discretion of the court.

SEC. 11. Section 25937 is added to the Revenue and Taxation Code, to read:

25937. The provisions of Section 6657 of the Internal Revenue Code, relating to bad checks, shall apply.

SEC. 12. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 847

An act relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Several intercity rail corridor capital needs studies have been authorized and funded by the Legislature for various rail corridors in the state, including the Los Angeles-San Diego, Los Angeles-Santa Barbara, Los Angeles-Fresno-San Francisco Bay Area/Sacramento, and Auburn-Oakland-San Jose rail corridors. These studies, coordinated by the Department of Transportation, have been or are in the process of being completed.

(2) A subsequent study is necessary to identify the availability and cost of certain types of railroad improvements, components, and technologies that could be applied uniformly to all of the existing rail corridors proposed for upgrading and modernization.

(3) It is the intent of the Legislature, in enacting this act, to authorize that necessary study.

(b) The department shall conduct a passenger rail technologies and facilities study to identify the availability, feasibility, and approximate costs of all of the following:

(1) Railroad signaling systems which enable passenger trains to travel at speeds in excess of 79 miles per hour, including cab signals, automatic train stop, and any other systems. The study shall include a discussion of the usage history and relative merits of the various systems, applicable requirements of federal law, and future technological advances that may be anticipated. The impact of each type of system on freight operations shall also be considered.

(2) Ticket vending machine systems, including, but not limited to, "one-stop-shopping" machines which allow passengers to purchase tickets at a single machine for various available modes of transit, including intercity rail, commuter rail, and local transit services. Ticket machines which accept more than one denomination of currency, credit cards, and debit cards, which make change, and which are able to dispense single ride, roundtrip, and multiple-ride tickets or passes shall be considered. The study shall identify ticket machine technology currently available, future technological developments that may be anticipated, and possible features that should be included in a new or revised design. Machine reliability, user friendliness, and operating and servicing costs shall be key factors in the department's review.

(3) Onboard telephone and facsimile communication systems.

The study shall identify types of technologies, including future developments that may be anticipated, reception difficulties and possible solutions along existing passenger rail corridors, and ridership and revenue requirements to allow these systems to be made available on at least a break-even basis.

(4) Train arrival and departure information displays. For station displays, the study shall consider both the so-called "solari" boards used in the National Railroad Passenger Corporation northeast corridor and television monitors which show departure and arrival times, platform location, origin and destination, train name, and status, among other things, for several trains. The study shall also consider individual changeable signs above each station platform which can be centrally controlled, similar to signs used by European rail systems, which identify the next train to serve a particular platform. The feasibility of an information system for all stations in the state, which is centrally controlled, shall be considered, along with an estimate of operating costs.

(5) A telephone information system offering toll-free access to recorded train information, fares, and status, among other things, with a selection of messages accessible by touch-tone telephone.

(c) The department may contract for the services of consultants in the preparation of this study.

(d) The report of the study shall be submitted to the Governor and the Legislature on or before August 1, 1991. Prior to final preparation and submission of the report, the department shall hold a public hearing on the draft report and incorporate comments in the final report.

SEC. 2. The sum of ninety-five thousand dollars ($95,000) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund to the Department of Transportation for purposes of Section 1 of this act.

SEC. 3. Sections 1 and 2 of this act shall not become operative unless Proposition 111 is approved by the voters at the June 5, 1990, direct primary election.

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 passenger rail technologies study required by Section 1 of this act may be commenced at the earliest possible time in order to be available for consideration with other rail corridor studies currently in progress or completed, it is necessary that this act take effect immediately.

CHAPTER 848

An act to amend Section 8150.5 of the Fish and Game Code, relating to sardines, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 8150.5 of the Fish and Game Code is amended to read:

8150.5. Sardines may not be taken or possessed on any boat, barge, or vessel except pursuant to Section 8150.7.

(a) However, loads or lots of fish may contain 15 percent or less by weight of sardines which are taken incidentally to other fishing operations and which are mixed with the other fish in the load or lot.

(b) This section does not prohibit the possession and use of sardines imported into this state under a bill of lading identifying the country of origin.

(c) Imported sardines may be used for dead bait under regulations as the commission may prescribe.

(d) Subdivision (a) is operative only when Section 8151 is not operative. Subdivisions (b) and (c) are operative and apply regardless of whether subdivision (a) or Section 8151 is operative.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act may be operative in the current year's season for the taking of sardines, it is necessary that this act take effect immediately.

CHAPTER 849

An act to amend Section 69800 of the Education Code, and to add and repeal Article 5 (commencing with Section 447.60) to Part 1.95 of Division 1 of the Health and Safety Code, relating to nurses.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 69800 of the Education Code is amended to read:

69800. There is hereby created within the Office of Statewide

Health Planning and Development a Minority Health Professions Education Fund. The primary purpose of this fund is to provide scholarships and loans to students from underrepresented minority groups who are accepted to or enrolled in schools of medicine, dentistry, nursing, or other health professions, and to fund the Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program pursuant to Article 5 (commencing with Section 447.60) of Part 1.95 of Division 1 of the Health and Safety Code. The fund shall also be used to pay for the cost of administering the program and for any other purpose authorized by this article. The level of expenditure by the office for the administrative support of the program created pursuant to this article shall be subject to review and approval annually through the state budget process. The office is authorized to receive private donations to be deposited into this fund. All money in the fund is continuously appropriated to the office for the purposes of this article and Article 5 (commencing with Section 447.60) of Part 1.95 of Division 1 of the Health and Safety Code. The office shall manage this fund prudently in accordance with other provisions of law.

SEC. 2. Article 5 (commencing with Section 447.60) is added to Part 1.95 of Division 1 of the Health and Safety Code, to read:

Article 5. Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program

447.60. The Legislature hereby finds and declares that more and better qualified medical care is needed for residents of health care facilities. The Legislature further finds that the shortage of physicians available to work in skilled nursing facilities and other facilities providing care primarily to geriatric patients is expected to continue.

Therefore, it is the intent of the Legislature to promote more and better-qualified medical care for geriatric patients by increasing training opportunities for geriatric nurse practitioners and geriatric clinical nurse specialists and by providing an incentive for nurse practitioners and clinical nurse specialists to practice in skilled nursing facilities or other facilities providing care primarily to geriatric patients. It is not the intent of the Legislature in enacting this measure to change the existing scope of practice of nurse practitioners or clinical nurse specialists.

447.61. For purposes of this article:

(a) A "geriatric clinical nurse specialist" is a registered nurse, licensed by the Board of Registered Nursing, who has completed a master's program in nursing with an emphasis on care of elders.

(b) A "geriatric nurse practitioner" is a registered nurse, licensed by the Board of Registered Nursing as a nurse practitioner, who has completed an educational program in gerontological nursing, or family or adult nursing with an emphasis on care of elders.

447.62. (a) There is hereby created the Geriatric Nurse

Practitioner and Clinical Nurse Specialist Scholarship Program within the Minority Health Professions Education Foundation. Persons participating in this program shall be persons enrolled in nurse practitioner or clinical nurse specialist programs in this state who agree in writing prior to graduation to practice for a period of time, to be determined in accordance with paragraph (1) of subdivision (b), as geriatric nurse practitioners or geriatric clinical nurse specialists either in skilled nursing facilities licensed pursuant to Section 1250 or in other settings in which care is provided primarily to geriatric patients. This program shall be administered in accordance with Article 4 (commencing with Section 447.40), and with Article 14 (commencing with Section 69795) of the Education Code, except that all funds shall be used only for geriatric nurse practitioners and geriatric clinical nurse specialists and except that the programs shall be available only to those geriatric nurse practitioners and geriatric clinical nurse specialists who agree to practice in skilled nursing facilities or other settings caring for geriatric patients.

(b) The Minority Health Professions Education Foundation shall make recommendations to the Director of the Office of Statewide Health Planning and Development concerning both of the following:

(1) A standard contractual agreement to be signed by the director and any student who has received an award to practice in a skilled nursing facility or other setting caring for geriatric patients that would require a period of obligated professional service. The obligated professional service shall be in direct patient care. The obligated professional service may be performed by a geriatric nurse practitioner or geriatric clinical nurse specialist either as an employee or independent contractor of a skilled nursing facility or other setting caring for geriatric patients, or as an employee or independent contractor of a physician providing care for geriatric patients in a skilled nursing facility or other setting. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(2) Maximum allowable amounts for scholarships and other financial assistance in order to assure the most effective use of these funds.

(c) To the extent feasible and appropriate, the Minority Health Professions Education Foundation shall assure that the standard contractual agreement and other aspects of the Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program are substantially similar to those developed for the Registered Nurse Education Program.

447.63. Awards shall be coordinated with other financial assistance. An effort shall be made to reach all nurse practitioner and clinical nurse specialist education programs in California.

447.64. In developing this program, the Minority Health Professions Education Foundation shall solicit the advice of the

representatives of the Board of Registered Nursing, the Student Aid Commission, the California Nurses Association, the California Association of Health Facilities, the California Association of Homes for the Aging, the Chancellor of the California State University, the President of the University of California, and other entities as may be appropriate.

447.65. This program shall be funded through the Minority Health Professions Education Fund pursuant to Section 69800 of the Education Code.

447.66. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 850

An act to add Section 1069 to the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1069 is added to the Fish and Game Code, to read:

1069. The director may enter into an agreement with the Director of Food and Agriculture for the collection of an assessment on behalf of any marketing council for fish or seafood organized under the Food and Agricultural Code. The agreement may authorize the department to collect the assessment in conjunction with the collection of landing taxes on those species for which the marketing council is organized. The department shall remit the amount of the assessment collected to the Director of Food and Agriculture according to the agreement after making the collection. Prior to remitting the assessments, the department may deduct an administrative fee in an amount agreed to with the Director of Food and Agriculture to pay the costs of collection and remission of the assessments. The administrative fees shall be deposited in the Fish and Game Preservation Fund.

CHAPTER 851

An act to amend Section 52941 of the Food and Agricultural Code, relating to cotton, and making an appropriation therefor.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 52941 of the Food and Agricultural Code is amended to read:

52941. (a) Any person who has cottonseed delinted for planting purposes under this chapter, shall annually pay to the director an assessment fee in an amount not to exceed four dollars ($4) per hundredweight on the undelinted weight of the cottonseed.

(b) Cottonseed delinters, by June 15th of each year, shall provide the director with the name and address of each person having cottonseed delinted and the undelinted weight of their cottonseed.

CHAPTER 852

An act to repeal Section 14353 of the Elections Code, relating to elections.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 14353 of the Elections Code is repealed.

CHAPTER 853

An act to amend Section 1157.2 of the Health and Safety Code, relating to public health service.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 1157.2 of the Health and Safety Code is amended to read:

1157.2. Any counties which were eligible for organization and operation of local public health services by the State Department of Health Services pursuant to Section 1157 as of January 1, 1988, shall thereafter continue to be eligible therefor, notwithstanding an

increase in total population beyond the 40,000 population limit of that section.

This section shall remain in effect 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 854

An act to add Section 9616 to the Unemployment Insurance Code, relating to employment.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 9616 is added to the Unemployment Insurance Code, to read:

9616. (a) The department, in coordination with the United States Department of Defense and the various branches of the military of the United States, shall determine which military occupational specialties have civilian counterpart jobs which require licensure by state or local agencies.

(b) The department shall further determine, to the degree possible, if any procedural, financial, technological, educational, or bureaucratic barriers exist which impede military personnel reentering the civilian work force from acquiring these licenses.

(c) The department shall submit a written report of its findings to the Legislature and the Governor. The report shall include recommendations regarding state legislation needed to remove any obstacles which impede military personnel who are reentering the civilian work force from acquiring state or local licenses.

(d) The department shall implement this section only to the extent federal funds are available for the costs of implementation.

CHAPTER 855

An act to add Section 1704.7 to the Health and Safety Code, relating to physicians and surgeons.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1704.7 is added to the Health and Safety Code, to read:

1704.7. A standardized written summary in layman's language and in a language understood by patients shall be developed by the state department on the recommendation of the Cancer Advisory Council and printed and made available by the Medical Board of California to physicians and surgeons, concerning the advantages, disadvantages, risks, and descriptions, of procedures with regard to medically viable and efficacious alternative methods of treatment of prostate cancer. Physicians and surgeons are urged to make the summary available to patients when appropriate.

CHAPTER 856

An act to amend Sections 51010.5, 51013.5, and 51018 of the Government Code, relating to pipelines.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 51010.5 of the Government Code is amended to read:

51010.5. As used in this chapter, the following definitions apply:

(a) "Pipeline" includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in the state. "Pipeline" does not include the following:

(1) An interstate pipeline subject to Part 195 of Title 49 of the Code of Federal Regulations.

(2) A pipeline for the transportation of a hazardous liquid substance in a gaseous state.

(3) A pipeline for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.

(4) A pipeline for the transportation of a hazardous liquid substance in those parts of an onshore pipeline system located in a rural area that transports crude oil from a treating facility or production storage facility to a tank farm, pipeline terminal, or transmission line.

(5) A pipeline for the transportation of a hazardous liquid substance offshore located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther

downstream.

(6) Transportation of a hazardous liquid by a flow line.

(7) A pipeline for the transportation of a hazardous liquid substance through an onshore production, refining, or manufacturing facility, including a storage or inplant piping system associated with that facility.

(8) Transportation of a hazardous liquid substance by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids between those modes of transportation.

(b) "Flow line" means a pipeline which transports hazardous liquid substances from the well head to a treating facility or production storage facility.

(c) "Hydrostatic testing" means the application of internal pressure above the normal or maximum operating pressure to a segment of pipeline, under no-flow conditions for a fixed period of time, utilizing a liquid test medium.

(d) "Local agency" means a city, county, or fire protection district.

(e) "Rural area" means a location which lies outside the limits of any incorporated or unincorporated city or city and county, or other residential or commercial area, such as a subdivision, a business, a shopping center, or a community development.

SEC. 1.5. 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) Piping within a refined products bulk loading facility served by pipeline shall be tested hydrostatically at 125 percent of maximum allowable operating pressure utilizing the product ordinarily transported in that piping if that piping is operated at a stress level of 20 percent or less of the specified minimum yield strength of the pipe. The frequency for pressure testing these pipelines shall be every five years for those pipelines with effective cathodic

protection and every three years for those pipelines without effective cathodic protection. If that piping is observable, visual inspection shall be the method of testing.

(f) Beginning on July 1, 1990, and continuing until the regulations adopted by the State Fire Marshal pursuant to subdivision (g) 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. If any pipeline becomes 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 (g) 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.

(g) The State Fire Marshal shall study indicators and precursors of serious pipeline accidents, and, in consultation with the Pipeline Safety Advisory Committee, 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.

(h) In addition to the requirements of subdivisions (a) to (e), 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.

(i) Test methods other than the hydrostatic tests required by subdivisions (b), (c), (d), and (e), 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), (d), and (e).

(j) 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 (i). 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. 2. Section 51018 of the Government Code is amended to read:

51018. (a) Every rupture, explosion, or fire involving a pipeline, including a pipeline system otherwise exempted by subdivision (a) of Section 51010.5, and including a pipeline undergoing testing, shall be immediately reported to the fire department having fire suppression responsibilities and to the Office of Emergency Services.

(b) The fire department having fire suppression responsibilities shall immediately notify the State Fire Marshal of the incident, who shall immediately dispatch his or her employees to the scene. The State Fire Marshal or his or her employees, upon arrival, shall provide technical expertise and advise the operator and all public agencies on activities needed to mitigate the hazard.

For purposes of this subdivision, the Legislature does not intend to hinder or disrupt the workings of the "incident commander system," but does intend to establish a recognized element of expertise and direction for the incident command to consult and acknowledge as an authority on the subject of pipeline incident mitigation. Furthermore, it is expected that the State Fire Marshal will recognize the expertise of the pipeline operator and any other emergency agency personnel who may be familiar with the particular location of the incident and respect their knowledgeable input regarding the mitigation of the incident.

(c) For purposes of this section, "rupture" includes every unintentional liquid leak, except that a crude oil leak of less than five barrels from a pipeline or flow line in a rural area, or any crude oil or petroleum product leak in any in-plant piping system of less than five barrels, when no fire, explosion, or bodily injury results or no waterway is contaminated thereby, does not constitute a rupture for purposes of the reporting requirements of subdivision (a).

(d) This section does not preempt any other applicable federal or state reporting requirement.

SEC. 3. The State Fire Marshal may employ six field deputies to carry out the provisions of this act.

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 857

An act to add Section 67051.1 to the Food and Agricultural Code, relating to avocados.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 67051.1 is added to the Food and Agricultural Code, to read:

67051.1. Notwithstanding Section 67051, if a handler from any cooperative handling avocados or a handler who is not within any cooperative handling avocados markets 30 percent or more of the volume of avocados in the preceding marketing season, as annually determined by the director, that handler may nominate and elect one handler member to the commission and shall fill the vacancy of the cooperative handler or an independent handler, as the case may be, whose term first expires after January 1, 1991. All other handlers shall nominate and elect the remaining handler members pursuant to this chapter. Any handler elected to the commission pursuant to this section shall maintain his or her eligibility during the entire term of office. Any vacancy caused by the ineligibility of the handler shall be filled in accordance with Section 67053.

CHAPTER 858

An act relating to courts.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. The Judicial Council shall study the effects of court sessions at times other than 8 a.m. to 5 p.m. Monday through Friday. The study shall evaluate the effects of these sessions on court administration, litigants, counsel, jurors, and costs of court operation.

The Judicial Council shall report its findings and recommendations thereon to the Legislature on or before January 1, 1992.

CHAPTER 859

An act to add Section 230.8 to the Labor Code, relating to employment.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

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

(a) More than 60 percent of the women of childbearing age in the United States are in the work force.

(b) Because of the changing roles of men and women in the work force and the family, and the need to promote stability and economic security in families, both men and women should have the option of taking leave for child rearing purposes.

(c) Parental participation in a child's education is fundamental and essential to accountability and mutual responsiveness and it is important to encourage parental participation in school activities by permitting the business community as employers to release their employees to visit schools during the schoolday.

SEC. 2. Section 230.8 is added to the Labor Code, to read:

230.8. (a) No employer, who employs 25 or more employees working at the same location, shall discharge or in any way discriminate against an employee who is a parent or guardian of any child in kindergarten or grades 1 to 12, inclusive, for taking off four hours each school year, per child, to visit the school of the child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence of the employee. An employee shall utilize existing vacation, personal leave, or compensatory time

off for purposes of this planned absence, unless otherwise provided by a collective bargaining agreement. The employee, if requested by the employer, shall provide documentation from the school as proof that he or she visited the school on a specific date and at a particular time. For purposes of this subdivision, "documentation" means whatever written verification of a parental visit the school deems appropriate and reasonable.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment by his or her employer because the employee has taken time off to visit the school of his or her child pursuant to subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

(c) Subdivisions (a) and (b) shall not apply to the state.

CHAPTER 860

An act relating to education.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. The Legislature finds and declares that, for the 1984–85 fiscal year, the Keyes Unified School District applied to the State Allocation Board for a supplemental deferred maintenance apportionment under Section 39619.5 of the Education Code, based upon the existence of an extreme hardship in the district. Due to a clerical error, the district failed to deposit the matching share amount in its deferred maintenance fund as required by paragraph (1) of subdivision (a) of Section 39619.5 of the Education Code until a date subsequent to the conclusion of the 1984–85 fiscal year.

SEC. 2. The State Allocation Board shall grant to the Keyes Unified School District the supplemental deferred maintenance apportionment under Section 39619.5 of the Education Code for the 1984–85 fiscal year in the amount to which the district would be entitled for that fiscal year without regard to the date upon which that district deposited in its deferred maintenance fund the matching share amount required under paragraph (1) of subdivision (a) of that section.

SEC. 3. Due to the unique circumstances specified in Section 1 of this act concerning the Keyes Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 861

An act to amend Sections 199.47, 199.50, and 199.51 of the Health and Safety Code, relating to AIDS vaccine.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 199.47 of the Health and Safety Code is amended to read:

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

(a) The average cost per patient in the treatment of AIDS until death is now one hundred fifty thousand dollars ($150,000). It is estimated that total costs including health care of the first 10,000 AIDS cases in the United States totaled more than six billion three hundred million dollars ($6,300,000,000). By 1990, according to the state department, Californians will spend almost five billion dollars ($5,000,000,000) in medical costs alone in care and treatment of 30,000 AIDS patients, with no realistic hope for their remission or cure. This cost does not include money spent on education, research, and lost income.

(b) To date, the costs of caring for people with AIDS related complex (ARC) has not been officially calculated. However, it is safe to assume the costs are substantial over time. Experts fear that the illnesses of ARC patients, although they may not be fatal, are severe. For example, the virus invades the brain rendering the patients incapable of caring for themselves. It is, therefore, plausible that a percentage of ARC patients will need to be institutionalized.

(c) The Legislature intends by this chapter to take uncommon action to remove the impediments to the expeditious development of an AIDS vaccine.

(d) It is further the intent of the Legislature to provide to any person, whose injury is proximately caused by the use of the vaccine, except to the extent the injuries are attributable to the comparative negligence of the claimant in the use of the vaccine, all of the following:

(1) Compensation for related medical costs associated with the care and treatment of the injury.

(2) Compensation for the loss of any and all earnings caused by

the injury.

(3) Compensation for pain and suffering caused by the injury, except that in no action shall the amount of damages for noneconomic losses exceed five hundred fifty thousand dollars ($550,000).

(e) It is further the intent of the Legislature to establish the AIDS Clinical Trials Testing Fund which will be available to not more than three California manufacturers of an AIDS vaccine approved by the federal Food and Drug Administration (FDA) or the state department pursuant to Division 21 (commencing with Section 26000) for clinical trials with humans.

(f) The AIDS Vaccine Research and Development Advisory Committee, established pursuant to Section 199.57, shall review requests from California manufacturers for funds from the AIDS Clinical Trials Testing Fund and shall make recommendations to the state department regarding the award of funds, including the appropriate amount of funding. The state department, taking into consideration the committee's recommendations, may allocate the funds to the manufacturers specified in the protocol approved by the FDA or the state department pursuant to Division 21 (commencing with Section 26000) for administering the clinical trials.

(g) A California manufacturer seeking the approval of the FDA, rather than the state department, for administering clinical trials of an AIDS vaccine may apply while FDA approval is pending to the AIDS Vaccine Research and Development Advisory Committee for the committee's recommendation that the manufacturer receive funds from the AIDS Clinical Trials Testing Fund upon FDA approval.

SEC. 2. Section 199.50 of the Health and Safety Code is amended to read:

199.50. (a) There is hereby created the AIDS Vaccine Victims Compensation Fund.

(b) For the purposes of this section:

(1) "AIDS vaccine" means a vaccine which (A) has been developed by any manufacturer and (B) is approved by the FDA or the state department pursuant to Division 21 (commencing with Section 26000) as a safe and efficacious vaccine for the purpose of immunizing against AIDS.

(2) "Board" means the State Board of Control.

(3) "Damages for personal injuries," means the direct medical costs for the care and treatment of injuries to any person, including a person entitled to recover damages under Section 377 of the Code of Civil Procedure, proximately caused by an AIDS vaccine, the loss of earnings caused by the injuries, and the amount necessary, but not to exceed five hundred fifty thousand dollars ($550,000), to compensate for noneconomic losses, including pain and suffering caused by the injuries.

(4) "Fund" means the AIDS Vaccine Victims Compensation Fund.

(c) The board shall pay from the fund, contingent entirely upon the availability of moneys as provided in subdivision (o), damages for personal injuries caused by an AIDS vaccine that is sold in or delivered in California, and administered or dispersed in California to the injured person except that no payment shall be made for any of the following:

(1) Damages for personal injuries caused by the vaccine to the extent that they are attributable to the comparative negligence of the person making the claim.

(2) Damages for personal injuries in any instance in which the manufacturer has been found to be liable for such injuries in a court of law.

(3) Damages for personal injuries due to a vaccination administered during a clinical trial.

(d) An application for payment of damages for personal injuries shall be made on a form prescribed by the board, which application may be required to be verified, within one year of the date that the injury and its cause are discovered. Upon receipt, the board may require the submission of additional information necessary to evaluate the claim.

(e) (1) Within 45 days of the receipt of the application and the submission of any additional information, the board shall do either of the following:

(A) Allow the claim in whole or part.

(B) Disallow the claim.

(2) In those instances of unusual hardship to the victim, the board may grant an emergency award to the injured person to cover immediate needs upon agreement by the injured person to repay in the event of a final determination denying the claim.

(3) If the claim is denied in whole or part, the victim may apply within 60 days of denial for a hearing. The hearing shall be held within 60 days of the request for a hearing unless the injured person requests a later hearing.

(f) At the hearing the injured person may be represented by counsel and may present relevant evidence as defined in subdivision (c) of Section 11513 of the Government Code. The board may consider additional evidence presented by its staff. If the injured person declines to appear at the hearing, the board may act solely upon the application, the staff report, and other evidence that appears on the record.

(g) The board may delegate the hearing of applications to hearing examiners.

(h) The decision of the board shall be in writing and shall be delivered or mailed to the injured person within 30 days of the hearing. Upon the request by the applicant within 30 days of delivery or mailing, the board may reconsider its decision.

(i) Judicial review of a decision shall be under Section 1094.5 of the Code of Civil Procedure, and the court shall exercise its independent judgment. A petition for review shall be filed as follows:

(1) If no request for reconsideration is made, within 30 days of personal delivery or mailing of the board's decision on the application.

(2) If a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or mailing of the notice of rejection.

(3) If a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or mailing of the final decision on the reconsidered application.

(j) The board shall adopt rules and regulations to implement this section, including those governing discovery.

(k) The fund is subrogated to any right or claim that any injured person may have who receives compensation pursuant to this section, or any right or claim that such person's personal representative, legal guardian, estate, or survivor may have, against any third party who is liable for the personal injuries caused by the AIDS vaccine, and the fund shall be entitled to indemnity from that third party. The fund shall also be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured person.

(*l*) In the event that the injured person, or his or her guardian, personal representative, estate, or survivors, or any of them, bring an action for damages against the person or persons liable for the injury or death giving rise to an award by the board under this section, notice of institution of legal proceedings and notice of any settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. All notices shall be given by the attorney employed to bring the action for damages or by the injured person, or his or her guardian, personal representative, estate, or survivors, if no attorney is employed.

(m) This section is not intended to affect the right of any individual to pursue claims against the fund and lawsuits against manufacturers concurrently, except that the fund shall be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured party by the fund.

(n) There is hereby created the AIDS Vaccine Injury Compensation Policy Review Task Force consisting of 14 members. The task force shall be composed of 10 members appointed by the Governor, of which two shall be from a list provided by the California Trial Lawyers Association, one from the state department, the Director of Finance, one unspecified member, and one attorney with experience and expertise in products liability and negligence defense work, two representing recognized groups which represent victims of vaccine induced injuries or AIDS victims, or both, and two representing manufacturers actively engaged in developing an AIDS vaccine. In addition four Members of the Legislature or their designees shall be appointed to the task force, two of which shall be appointed by the Speaker of the Assembly and two of which shall be

appointed by the Senate Rules Committee. The chairperson of the task force shall be appointed by the Governor from the membership of the task force. The task force shall study and make recommendations on the legislative implementation of the fund created by subdivision (a). These recommendations shall at least address the following issues:

(1) The process by which victims are to be compensated through the fund.

(2) The procedures by which the fund will operate and the governance of the fund.

(3) The method by which manufacturers are to pay into the fund and the amount of that payment.

(4) The procedural relationship between a potential victim's claim through the fund and a court claim made against the manufacturer.

(5) Other issues deemed appropriate by the task force.

The task force shall make its recommendations to the Legislature on or before June 30, 1987.

(o) The fund shall be funded wholly by a surcharge on the sale of an AIDS vaccine, which has been approved by the FDA, or by the state department pursuant to Division 21 (commencing with Section 26000), in California in an amount to be determined by the state department. The surcharge shall be levied on the sale of each unit of the vaccine sold or delivered, administered, or dispensed in California. The appropriate amount of the surcharge shall be studied by the AIDS Vaccine Injury Compensation Policy Review Task Force which shall recommend the appropriate amount as part of its report, with the amount of the surcharge not to exceed ten dollars ($10) per unit of vaccine. Expenditures of the task force shall be made at the discretion of the Director of Finance or the director's designee.

(p) For purposes of this section, claims against the fund are contingent upon the existing resources of the fund as provided in subdivision (o), and in no case shall the state be liable for any claims in excess of the resources in the fund.

SEC. 3. Section 199.51 of the Health and Safety Code is amended to read:

199.51. (a) Because the development of a vaccine now costs somewhere between twenty million dollars ($20,000,000) and forty million dollars ($40,000,000), and because the last vaccine produced and marketed did not sell well, vaccine manufacturers are hesitant to proceed to invest their resources in such a risky venture. It is, therefore, in the public health interest of California to assure that manufacturers proceed to develop this vaccine and protect Californians against this dread disease and protect the State of California against the enormous fiscal costs of treatment for persons getting AIDS. It is a sound and worthwhile investment to provide a guarantee of a market to lessen the risk of loss and assure the development of an AIDS vaccine.

It is anticipated that this AIDS vaccine will consist of a three-unit series. The State of California is willing to guarantee that at least 175,000 persons will be vaccinated, and to guarantee the purchase, within three years after the FDA or the state department pursuant to Division 21 (commencing with Section 26000) approves marketing of an AIDS vaccine, of at least 500,000 units, at a cost of no more than twenty dollars ($20) per dosage, by all companies, anywhere in the United States.

Therefore, the State of California, by moneys to be appropriated later through the Budget Act, commits itself to purchasing, at the end of three years after the FDA or the state department pursuant to Division 21 (commencing with Section 26000) has approved the marketing on a competitive basis, at not more than twenty dollars ($20) per dosage, the difference between 500,000 units and the actual amount sold, delivered, administered, or dispensed by all companies throughout the United States, including units sold to or reimbursed by Medi-Cal, Medicare, or other public programs, providing that less than 500,000 units are sold, delivered, administered, or dispensed.

(b) The AIDS Vaccine Guaranteed Purchase Fund is hereby established and shall be administered by the State Department of Health Services, which may develop necessary regulations to carry out the purpose of this section.

(c) The State Department of Health Services may carry out this section, when such funds are appropriated through the State Budget. In determining which vaccine shall be purchased by the state from among those manufacturers selling or distributing in California, an AIDS vaccine approved by the FDA or the state department pursuant to Division 21 (commencing with Section 26000), the state department shall take into consideration at least all of the following factors:

(1) The length of time each AIDS vaccine has been in the marketplace in California.

(2) Each AIDS vaccine's history of efficacy since approval by the FDA or the state department.

(3) Each AIDS vaccine's history of side effects experienced by previous recipients of the vaccine.

(4) The relative cost of each competing manufacturer's AIDS vaccine.

CHAPTER 862

An act to amend Section 21373 of, and to add Section 20755.2 to, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 20755.2 is added to the Government Code, to read:

20755.2. Each school employer, on account of liability for the benefits provided by Section 21373, as amended on January 1, 1991, shall make contributions in addition to those otherwise specified in this chapter in a sum equal to the following percentages of compensation paid those members:

(a) _____ percent during the 1990–91 fiscal year.

(b) _____ percent during the fiscal years after the 1990–91 fiscal year.

SEC. 2. Section 21373 of the Government Code is amended to read:

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

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

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

This section shall not apply to any contracting agency, unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after the operative date of the statute adding this section by express provision in the contract making the contracting agency subject to this section. This section shall only apply to a surviving spouse of a local member employed by the contracting agency whose remarriage occurred on or after the date the agency elects to be subject to this section. Any surviving spouse of a local member of the contracting agency, who elected the reduction specified in Section 21372, shall be restored to the lifetime

allowance to which he or she was originally entitled, for all benefits payable on or after the election by the contracting agency to be subject to this section.

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

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

SEC. 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 863

An act to add Section 17701.5 to the Business and Professions Code, relating to advertising.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 17701.5 is added to the Business and Professions Code, to read:

17701.5. It is unlawful for any person to advertise a price that requires the buyer to send in a coupon to the manufacturer for a cash rebate, unless the price actually paid to the person selling the item is clearly and conspicuously advertised along with the final price with the coupon.

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 864

An act to amend, add, and repeal Section 226.5 of, and to add and repeal Section 224.45 of, the Civil Code, relating to adoption.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 224.45 is added to the Civil Code, to read:

224.45. (a) With respect to petitions for which a fee is charged, deferred, reduced, or waived under Section 224.47, if the department or a delegated county adoption agency fails without good cause to conduct the interviews of the petitioners and all persons from whom consent is required as specified in Section 224.44 and, within the period of time specified in Section 224.44, the petitioners, upon giving 10 days' written notice to the department or the delegated county adoption agency responsible for the investigation of the adoption, may request the superior court in which the adoption petition has been filed, or the superior court in the county in which the birth parent resides, to permit the signing of the consent in the presence of the court by any person whose consent is required. The consent and a statement of understanding shall be obtained on forms prescribed by the department. In all cases in which the consent of the birth parent or parents is taken pursuant to this subdivision, the consent form and the statement of understanding shall be read and signed by the birth parent or parents in the presence of the superior court. Consent provided pursuant to this subdivision shall be in lieu of the otherwise applicable provisions of subdivisions (a) and (c) of Section 224.62, but shall have the same effect.

(b) For purposes of this section, "good cause" includes, but is not limited to, the following:

(1) An inability to contact or locate any of the persons who are required to be interviewed pursuant to Section 224.44.

(2) Failure of the petitioner to provide the district office of the department or the delegated county adoption agency with a copy of the filed petition and the names, addresses, and telephone numbers of all persons to be interviewed, within 10 working days of the date the petition is filed with the court.

(c) The fee authorized by subdivision (a) of Section 224.47 shall be waived if the consent of any party from whom consent is required

is taken in the presence of the court pursuant to subdivision (a) of this section.

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. 1.5. Section 226.5 of the Civil Code is amended to read:

226.5. (a) 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 persons to be interviewed, if known.

(b) With respect to petitions for which a fee is charged, deferred, reduced, or waived under Section 225q, if the State Department of Social Services or a licensed county adoption agency fails without good cause to conduct the interviews of the petitioners and all persons from whom consent is required as specified in subdivision (a) and within the period of time specified in subdivision (a), the petitioners, upon giving 10 days' written notice to the State Department of Social Services or the licensed county adoption agency responsible for the investigation of the adoption, may request the superior court in which the adoption petition has been filed, or the superior court in the county in which the birth parent resides, to permit the signing of the consent in the presence of the court by any person whose consent is required. The consent and a statement of understanding shall be obtained on forms prescribed by the State Department of Social Services. In all cases in which the consent of the birth parent or parents is taken pursuant to this subdivision, the consent form and the statement of understanding shall be read and signed by the birth parent or parents in the presence of the superior court. Consent provided pursuant to this subdivision shall be in lieu of the otherwise applicable provisions of subdivisions (a) and (c) of Section 226.1, but shall have the same effect.

For purposes of this section, "good cause" includes, but is not limited to, the following:

(1) An inability to contact or locate any of the persons who are required to be interviewed pursuant to subdivision (a).

(2) Failure of the petitioner to provide the district office of the State Department of Social Services or the licensed county adoption agency with a copy of the filed petition and the names, addresses, and telephone numbers of all persons to be interviewed, within 10 working days of the date the petition is filed with the court.

(c) Unless earlier repealed by the act adding this subdivision, 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 226.5 is added to the Civil Code, 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 persons to be interviewed, if known.

Except as otherwise provided by the act enacting this section, this section shall become operative on January 1, 1993.

SEC. 3. Section 224.45 of the Civil Code, as added by Section 1 of this act shall become operative on July 1, 1991, but only if Assembly Bill 3532 of the 1989–90 Regular Session is enacted and repeals Section 225q of the Civil Code, in which case (a) Section 226.5 of the Civil Code as amended by Section 1.5 of this act shall be repealed on July 1, 1991, and (b) the addition of Section 226.5 to the Civil Code made by Section 2 of this act, shall not become operative.

CHAPTER 865

An act to amend Section 18023 of the Health and Safety Code, relating to escrow.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 18023 of the Health and Safety Code is amended to read:

18023. (a) The director, and any other representatives of the department designated by the director, shall have the powers of peace officers only for the purpose of service of warrants or documents and for the cooperation with other law enforcement agencies in the collection of information.

(b) The department shall notify any concerned governmental agency whenever it is determined by investigation that an escrow agent has done any of the following:

(1) Violated Section 18035. 18035.2, or applicable administrative rules and regulations.

(2) Engaged in loan fraud.

(3) Submitted false information to the department for the purposes of titling and registration of a manufactured home or mobilehome.

CHAPTER 866

An act to add Chapter 16 (commencing with Section 30050) to Division 22 of the Health and Safety Code, relating to toxic products.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. The Legislature finds and declares the following:

(a) Most poisonings involve children under six years of age.

(b) The federal Poison Prevention Packaging Act of 1970 requires child-resistant safety packaging for various toxic household products in order to inhibit a child's ability to access poisonous substances. This effort, in conjunction with heightened parental education efforts and labeling requirements, has significantly reduced the number of poisonings. However, (1) most poisonings occur while the product is in use, rather than when stored, and (2) many toxic household products are exempt from the child-resistant safety packaging laws.

(c) The National Safety Council, the American Medical Association, and the American Association of Poison Control Centers have found evidence exists that the addition of nontoxic bittering agents to toxic household products will make these products so bitter that many children rejected the products upon, or shortly after, tasting them. These organizations have urged manufacturers of toxic household products to add nontoxic bittering agents to their products in order that ingestion of the products be severely limited, thus providing another means to prevent or mitigate severe poisonings.

(d) Bittering agents are currently being used in various household products to mitigate child poisonings in the United Kingdom, France, Canada, Australia, West Germany, and the United States.

(e) It is the intent of the Legislature that this act shall serve as an additional method to protect children from accidentally ingesting poisonous substances, but shall not be interpreted to supplant existing programs and poison prevention methods.

(f) The Legislature strongly encourages those manufacturers of extremely toxic household products to use every means possible to protect children from accidental poisonings, including the use of appropriate labels which depict clear safety warnings, product use, and storage instructions, child-resistant safety closures, and a bittering agent, whenever possible.

SEC. 2. Chapter 16 (commencing with Section 30050) is added to Division 22 of the Health and Safety Code, to read:

CHAPTER 16. THE CHILDREN'S POISON PROTECTION ACT OF 1990

30050. This chapter shall be known and may be cited as the Children's Poison Protection Act of 1990.

30051. As used in this chapter:

(a) "Household" means any product used under any of the following circumstances:

(1) Directly on humans or pets.

(2) In, on, or around any structure, vehicle, article, surface, or area associated with the household, including, but not limited to, nonagricultural outbuildings, noncommercial greenhouses, pleasure boats, and recreational vehicles.

(3) In or around any preschool or day care facility.

(b) "Liquid" means a liquid preparation that flows readily in its natural state at room temperature containing one or more soluble chemical substances usually dissolved in water or other solvents. "Solvent" includes, but is not limited to, aqueous acids (acetic, hydrochloric, and nitric acids) and nonaqueous solutions (spirits, liniments).

(c) "Toxic household product" means any substance or mixture of substances which are customarily produced or distributed for sale for use in or about the household, or are customarily stored by individuals in or about the household, and the substance or mixture of substances have the capacity to produce significant personal injury or illness to humans when orally ingested in moderate amounts.

"Toxic household product" shall not include any of the following:

(1) Products which contain hydrocarbons in which the only known toxicity is through lung aspiration of minute amounts and not absorption through the stomach.

(2) Products which are intended for use in or around the mouth or are reasonably expected to be used orally or ingested.

(3) Economic poisons packaged in containers of more than one gallon liquid or more than 10 pounds dry weight.

(4) With the exception of products containing 2.5 percent or more by weight camphor in liquid formulations, any drug, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) and the Sherman Food, Drug, and Cosmetic Law (Division 21 (commencing with Section 26000)).

(5) Products which, immediately upon ingestion, cause severe damage or irritation to the mouth or tongue, or are fatal upon a single taste.

(6) Products packaged in pressurized aerosol containers.

(7) Products containing ethylene glycol which are described in paragraphs (7), (9), and (38) of subdivision (a) of Section 1500.83 of Part 1500 of Title 16 of the Code of Federal Regulations.

30052. (a) Except as provided in subdivision (b), any toxic household product which contains any substance listed in subdivision (a) of Section 30053, and manufactured on and after January 1, 1992, and sold in California, shall include within the product a bittering agent which is nontoxic within the product, in a concentration so as to render the product aversively bitter, unless the product is packaged with child-resistant safety closures in accordance with the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Sec. 1471 et seq.) and regulations adopted thereunder (16 C.F.R. 1700.1 et seq.).

(b) Any toxic household product which (1) is required to be registered with the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 135 et seq.), (2) is formulated for outdoor or food use economic poisons purposes, and (3) will be reformulated to include a bittering agent, shall comply with subdivision (a) no later than two years from the date when the Environmental Protection Agency has approved a bittering agent for use in outdoor or food use economic poisons.

30053. (a) Manufacturers of toxic household products which contain any of the following substances shall comply with Section 30052, unless the manufacturer documents that there are no signs of toxicity at an oral dose of five grams of product per kilogram of body weight, or the product's container, when full, contains a dose less than that which has previously been documented by the manufacturer to be nontoxic:

(1) Acetonitrile.
(2) Sodium bromate (600 mg or more).
(3) Potassium bromate (50 mg or more).
(4) Carbamates (used in insecticide formulations).
(5) Chlorinated hydrocarbon insecticides and solvents (5 percent or more by weight).
(6) Cyanide.
(7) Diquat.
(8) Ethylene glycol (10 percent or more by weight).
(9) Organophosphate insecticides.
(10) Metaldehyde.
(11) Methanol (methyl alcohol) (4 percent or more by weight).
(12) Phenol (10 percent or more by weight).
(13) Pine oil, in concentrations of 20 percent or more.
(14) Strychnine formulations.

(b) Due to the lack of long-term testing results for dermal exposure of available bittering agents, manufacturers of toxic household products which contain any of the following substances in liquid formulations shall, in lieu of complying with Section 30052, package their products with child-resistant safety closures in accordance with the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Sec. 1471 et seq.) and regulations adopted thereunder (16 C.F.R. 1700.1 et seq.):

(1) Camphor (2.5 percent or more by weight).

(2) Diethyltoluamide (5 percent or more by weight).

(3) Ethylhexanediol (5 percent or more by weight).

30054. (a) It is unlawful for any person to distribute or sell a toxic household product or cause a toxic household product to be distributed or sold in this state if it does not meet the requirements of this chapter.

(b) The prohibition contained in subdivision (a) shall not apply to a person engaged in the business of wholesale or retail distribution of a toxic household product, unless the person is engaged in the manufacture of the product, or has knowledge that a toxic household product which he or she is distributing or selling is in violation of this chapter.

(c) Nothing in this section shall be construed to exempt a distributor of a house brand from any provision of this chapter.

30055. (a) Any person may bring a civil action in a court of competent jurisdiction to enforce the requirements of this chapter. The court may grant injunctive relief in any action brought pursuant to this section.

(b) Exemplary damages, as provided for in Section 3294 of the Civil Code, may also be awarded in any action brought pursuant to this section.

(c) Whenever the person bringing the action pursuant to this section is the prevailing party, he or she shall be awarded attorney's fees and costs by the court.

30056. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for each day of violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General in any court of competent jurisdiction.

30057. All civil penalties collected pursuant to Section 30056 shall be deposited in the Children's Poison Protection Act of 1990 Fund, which is hereby created in the State Treasury. Money in the fund shall be allocated by the Emergency Medical Services Authority, when appropriated thereto by the Legislature, to the California Regional Poison Control Centers for the purpose of their poisoning prevention education programs.

CHAPTER 867

An act to amend Section 5090.41 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 5090.41 of the Public Resources Code is amended to read:

5090.41. (a) The following lands within the boundaries of the state vehicular recreation areas listed in subdivision (a) of Section 5090.40 are part of the state park system:

(1) Sixty acres classified as natural preserve and 830 acres classified as cultural preserve at Hungry Valley State Vehicular Recreation Area. The division shall continue the management of 4,160 acres of grassland as a part of the State Vehicular Recreation Area and Trail System, but shall provide for the operation of off-highway motor vehicles in a manner compatible with the continued healthy growth of natural grasses and associated flora.

(2) One acre classified as a cultural preserve at the Ocotillo Wells State Vehicular Recreation Area.

(3) Two hundred eighty acres at Hollister Hills State Vehicular Recreation Area set aside for nature study and closed to the operation of off-highway motor vehicles. The division shall carry out the above designations protecting their natural and cultural values by taking appropriate measures, which may include the erection of physical barriers to off-highway vehicle use.

(b) Approximately 395 acres at Hollister Hills State Vehicular Recreation Area identified as a "Buffer Zone" on the Record of Survey filed by the State of California with the County Recorder of San Benito County, California on April 2, 1990, in the Book of Maps, Number 10, Page Number 79, plus the three southernmost areas, consisting of approximately 196 acres identified on Figure I-2, Page 5, Appendix, Environmental Impact Report for Acquisition of Additional Land at Hollister Hills SVRA, State Clearing House Number 88051716, are closed to the operation of off-highway motor vehicles.

CHAPTER 868

An act to amend Sections 8046 and 8047 of the Fish and Game Code, relating to fish.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 8046 of the Fish and Game Code is amended to read:

8046. (a) The original signed copy of the landing receipt made under Section 8043 shall be delivered to the commercial fisherman at the time of the purchase or receipt of the fish. That copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time during that period by the department. A copy of the landing receipt shall be kept by the person licensed pursuant to Article 7 (commencing with Section 8030) who filled out the landing receipt for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered to the department on or before the first and 16th day of each month.

(b) On delivery of sardines, anchovies, mackerel, squid, tuna, or bonito intended to be processed or sold as fresh fish, the person licensed pursuant to Article 7 (commencing with Section 8030) who filled out the landing receipt, upon request of the authorized agent described in subdivision (c), shall notify the authorized agent of the unloading and weighing of the fish and shall permit the authorized agent to be present at all times during the weighing of the fish.

(c) A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

SEC. 2. Section 8047 of the Fish and Game Code is amended to read:

8047. (a) A person licensed under Article 7 (commencing with Section 8030) who takes his or her own fish shall make a legible record in the form of the landing receipt as required by Section 8043 at the time the fish are brought ashore. The original signed copy of the landing receipt shall be retained by the licensee for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered by the licensee to the department on or before the first and 16th day of each month. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7 (commencing with Section 8030) shall make a legible record in the form of the landing receipt required by Section 8043 and shall be subject to the tax imposed by Section 8041. The person taking, purchasing, or receiving the fish, whether or not licensed under Article 7 (commencing with Section 8030), shall sign the landing receipt. The original signed copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be retained by the person taking, purchasing, or receiving the fish until they are prepared for consumption or otherwise disposed of. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy. A copy of the landing receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month.

(c) (1) Every commercial fisherman or his or her designee, who transports, causes to be transported, or delivers to another person for transportation, any fish, except herring, taken from the waters of this state or brought into this state in fresh condition, shall fill out a transportation receipt on forms provided by the department at the time the fish are brought ashore.

(2) The name of the person transporting the fish shall be entered on the transportation receipt.

(3) The original signed copy of the transportation receipt shall be retained by the commercial fisherman who filled it out for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the transportation receipt shall be given to and retained by the person transporting the fish until the fish are sold fresh, processed, or otherwise disposed of. A copy of the transportation receipt shall be delivered to the department on or before the first and 16th day of each month.

(4) The transportation receipt is required only for transit purposes.

(5) A person transporting fish from the point of first landing under a transportation receipt is not required to be licensed to conduct the activities of a fish receiver as described in Section 8033.

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 869

An act to add Section 9758 to the Welfare and Institutions Code, relating to aging.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 9758 is added to the Welfare and Institutions Code, to read:

9758. (a) No volunteer health insurance counselor shall provide counseling services under this chapter unless he or she is registered with the department.

(b) (1) No registered volunteer health insurance counselor shall be liable for his or her negligent act or omission in providing counseling services under this chapter. No immunity shall apply to any counselor's grossly negligent act or omission, or intentional misconduct.

(2) No registered volunteer health insurance counselor shall be liable to any insurance agent, broker, employee thereof, or similarly situated person for defamation, trade libel, slander, or similar actions based on statements made by the counselor when providing counseling, unless a statement was made with actual malice.

(c) Prior to providing any counseling services, volunteer health insurance counselors shall disclose, in writing, to recipients of counseling services pursuant to this chapter that the counselors are acting in good faith to provide information about health insurance policies and benefits on a volunteer basis, but that the information shall not be construed to be legal advice, and that the counselors are, generally, not liable for their acts and omissions in providing counseling to recipients, unless those acts or omissions are grossly negligent or there is intentional misconduct on the part of the counselor.

(d) The department shall not register any applicant under this section unless he or she has received training which is approved by the department, and which shall include not less than 24 hours of training, which shall include all of the following subjects:

(1) Medicare.

(2) Health insurance.

(3) Counseling skills.

(4) Any other subject or subjects determined by the department to be necessary to the provision of counseling services under this chapter.

CHAPTER 870

An act to add Section 10192 to the Insurance Code, relating to insurance.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 10192 is added to the Insurance Code, to read:

10192. If a policy of life insurance becomes paid up pursuant to a paid up nonforfeiture benefit, the insurer shall send a notice to the owner of the policy not later than six months after the date the paid up nonforfeiture benefit becomes effective, and once every five years thereafter. The notice shall advise the owner of the policy that the owner, within six months after the date of the notice, may request the insurer to send notices to all direct beneficiaries named in the policy. If so requested, the insurer shall send the notices by first-class mail to the addresses of the beneficiaries as supplied by the owner. The notices shall advise the beneficiaries that they are named as beneficiaries in the policy, and shall identify the owner of the policy and the insured. The insurer shall provide, but not be limited to, the following information upon request from the beneficiary: (a) how the policy of insurance is identified on the records of the insurer, (b) the amount of death benefits, and (c) the cash surrender value of the policy.

CHAPTER 871

An act to amend Section 12553 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 12553 of the Welfare and Institutions Code is amended to read:

12553. (a) Notwithstanding Section 12552, special circumstances shall also include the administration and payment by the department pursuant to this section of a recurring special need allowance to every eligible recipient who has a guide dog, signal dog, or other service dog, to pay for dog food and other costs associated with the dog's care and maintenance.

(b) Beginning January 1, 1991, the special need allowance shall be

forty dollars ($40) per month. Beginning July 1, 1991, this amount shall be increased to fifty dollars ($50) per month.

(c) The department shall mail an application for the allowance to each eligible recipient. The application shall be upon a standard form prescribed by regulations of the department and containing a written declaration that the affirmation is made under penalty of perjury subject to prosecution as the crime of perjury under the Penal Code. The recipient or, if the recipient is incapable, another person as described in Section 11054 may make the affirmation. The department shall grant the special need allowance upon the basis of the affirmation by mailing a monthly warrant in the amount indicated in subdivision (b) to the recipient.

(d) The county welfare department shall cooperate in assisting the recipient in completing his or her application for the special need allowance authorized by this section.

(e) For purposes of this section, "eligible recipient" means any blind or disabled recipient of either or both of the following benefits:

(1) Federal supplemental security income benefits provided pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code.

(2) Benefits provided under the State Supplementary Program pursuant to Chapter 3 (commencing with Section 12000).

CHAPTER 872

An act to amend Section 2948.5 of the Civil Code, and to amend Section 12413.1 of the Insurance Code, relating to financial obligations.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 2948.5 of the Civil Code is amended to read:

2948.5. Interest on the principal obligation of a promissory note secured by a mortgage or deed of trust on real property improved with one-to-four residential dwelling units shall not commence to accrue prior to close of escrow if the loan proceeds are paid into escrow or, if there is no escrow, the date upon which the loan proceeds have been made available for withdrawal as a matter of right, as specified in subdivision (d) of Section 12413.1 of the Insurance Code.

This section does not apply if the loan proceeds are paid or made available, as the case may be, in cash or by a check, cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order issued by, or drawn on, a financial institution, the accounts of which are insured by an agency or instrumentality of the

United States, and which has an office in this state from which payment may be obtained.

SEC. 2. Section 12413.1 of the Insurance Code is amended to read:

12413.1. No title insurance company, controlled escrow company, or underwritten title company shall disburse funds from an escrow account until the day established by the following:

(a) Except for funds deposited by cash or by electronic payment, deposits accorded next day availability pursuant to Part 229 of Title 12 of the Code of Federal Regulations may not be disbursed until the business day following the business day of deposit.

(b) Except for drafts, deposits not accorded next day availability pursuant to Part 229 of Title 12 of the Code of Federal Regulations shall not be disbursed until the day on which these funds must be made available to depositors under the federal regulation specified in this subdivision.

(c) Funds deposited by cash or by electronic payment may be disbursed following deposit on the same business day as the business day of deposit.

(d) Notwithstanding the provisions of subdivision (b), deposits other than drafts may be disbursed on the business day following the business day of deposit if the financial institution to which the funds have been deposited informs the title insurance company, controlled escrow company, or underwritten title company in writing that final settlement has occurred on the deposited item. For the purposes of this subdivision, an electronically transmitted document that specifies that final settlement has occurred constitutes written notice as to an individual item.

(e) Where a draft, other than a share draft, has been received and submitted for collection, no title insurance company, controlled escrow company, or underwritten title company shall disburse funds from an escrow account with respect to the draft until the proceeds of the draft have become available for withdrawal from the financial institution to which the draft has been submitted for collection. For purposes of this subdivision, "available for withdrawal" means when the draft has been submitted for collection and payment received. Notwithstanding this subdivision, disbursement of funds represented by share drafts shall be governed by subdivisions (b) and (d), if applicable.

(f) For purposes of this section, "escrow account" means any depository account with a financial institution to which funds are deposited with respect to any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor,

bailee, bailor, or any agency or employee of the latter.

(g) Except as provided in subdivision (h), for purposes of this section, any word or term used herein or relevant to interpretation of this section, including, but not limited to, "available for withdrawal," "check," "electronic payment," and "business day," which is defined in Part 229 of Title 12 of the Code of Federal Regulations on January 1, 1990, shall have the meaning there given as the regulations existed on January 1, 1990.

(h) For purposes of this section, "financial institution" means any financial institution specified in Section 12413.5.

(i) No title insurance company, controlled escrow company, or underwritten title company shall be liable for a violation of this section if the violation was not intentional or resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid that error. Examples of bona fide errors include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors.

(j) Nothing in this section shall be deemed to prohibit the recordation of documents prior to the time funds are available for disbursement with respect to a transaction provided the parties to the transaction consent in writing prior thereto.

(k) Nothing in this section is intended to amend, alter, or supersede other sections of this code, or other laws of this state or the United States, regarding an escrow holder's duties and obligations.

CHAPTER 873

An act to add Sections 2459.5, 2459.6, and 2459.7 to the Business and Professions Code, relating to osteopathic physicians and surgeons.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. The Legislature is concerned with both the quality and cost of health care and its delivery to Californians. The purpose of this act is to provide for a more effective utilization of the skills of osteopathically trained physicians and surgeons in their treatment of patients, by enabling them to supervise and delegate tasks to qualified aides.

SEC. 2. Section 2459.5 is added to the Business and Professions Code, to read:

2459.5. An osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act may utilize the services of an aide to assist the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment. The aide shall at all times be under the orders, direction, and immediate supervision of the

osteopathic physician and surgeon. Nothing in this section shall authorize an aide to function independently of the osteopathic physician and surgeon or shall be construed as authorizing an osteopathic aide to practice medicine, surgery, or any other form of healing art.

SEC. 3. Section 2459.6 is added to the Business and Professions Code, to read:

2459.6. (a) For the purposes of Section 2459.5 and this section:

(1) "Osteopathic physician and surgeon" means a person defined in the Osteopathic Initiative Act.

(2) "Osteopathic manipulative treatment" means the therapeutic application of manually guided forces by an osteopathic physician and surgeon to alleviate somatic dysfunction.

(3) "Somatic dysfunction" means an impaired or altered function of related components of the somatic system.

(4) An "osteopathic aide" means an unlicensed person who assists an osteopathic physician and surgeon in the provision of osteopathic manipulative treatment provided that assistance is rendered under the supervision of an osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act. An aide is not authorized to perform osteopathic manipulative procedures.

(5) "Under the orders, direction and immediate supervision" means the evaluation of the patient by the osteopathic physician prior to the performing of an osteopathic manipulative treatment patient-related task by the aide, the formulation and recording in the patient's record by the osteopathic physician and surgeon of an osteopathic manipulative treatment program based upon the evaluation, and any other information available to the osteopathic physician and surgeon prior to any delegation of a task to an aide. The osteopathic physician and surgeon shall assign only those patient-related tasks that can be safely and effectively performed by the aide. The supervising osteopathic physician and surgeon shall be responsible at all times for the conduct of the aide while he or she is on duty and shall provide continuous and immediate supervision of the aide. The osteopathic physician and surgeon shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks and shall be readily available at all times to provide advice or instructions to the aide.

(6) A "patient-related task" is restricted to assisting the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment.

(b) Osteopathic aides may not use roentgen rays and radioactive materials.

(c) The board shall require the supervising osteopathic physician and surgeon to conduct orientation of the aide regarding patient-related tasks.

(d) No osteopathic physician and surgeon shall supervise more than two osteopathic aides at any one time.

SEC. 4. Section 2459.7 is added to the Business and Professions

Code, to read:

2459.7. Notwithstanding any other provision of law, no osteopathic physician and surgeon shall utilize an osteopathic aide to perform services other than those specified in Sections 2459.5 and 2459.6. A violation of this section constitutes unprofessional conduct and is grounds for disciplinary action.

CHAPTER 874

An act to amend Section 12276.5 of the Penal Code, relating to assault weapons.

[Approved by Governor September 12, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 12276.5 of the Penal Code is amended to read:

12276.5. (a) Upon request by the Attorney General filed in a verified petition in a superior court of a county with a population of more than 1,000,000, the superior court shall issue a declaration of temporary suspension of the manufacture, sale, distribution, transportation, or importation into the state, or the giving or lending of a firearm alleged to be an assault weapon within the meaning of Section 12276 because the firearm is either of the following:

(1) Another model by the same manufacturer or a copy by another manufacturer of an assault weapon listed in subdivision (a), (b), or (c) of Section 12276 which is identical to one of the assault weapons listed in those subdivisions except for slight modifications or enhancements including, but not limited to: a folding or retractable stock; adjustable sight; case deflector for left-handed shooters; shorter barrel; wooden, plastic or metal stock; larger magazine size; different caliber provided that the caliber exceeds .22 rimfire; or bayonet mount. The court shall strictly construe this paragraph so that a firearm which is merely similar in appearance but not a prototype or copy cannot be found to be within the meaning of this paragraph.

(2) A firearm first manufactured or sold to the general public in California after June 1, 1989, which has been redesigned, renamed, or renumbered from one of the firearms listed in subdivision (a), (b), or (c) of Section 12276, or which is manufactured or sold by another company under a licensing agreement to manufacture or sell one of the firearms listed in subdivision (a), (b), or (c) of Section 12276, regardless of the company of production or distribution, or the country of origin.

(b) Upon the issuance of a declaration of temporary suspension by the superior court and after the Attorney General has completed the

notice requirements of subdivisions (c) and (d), the provisions of subdivision (a) of Section 12280 shall apply with respect to those weapons.

(c) Upon declaration of temporary suspension, the Attorney General shall immediately notify all police, sheriffs, district attorneys, and those requesting notice pursuant to subdivision (d), shall notify industry and association publications for those who manufacture, sell, or use firearms, and shall publish notice in not less than 10 newspapers of general circulation in geographically diverse sections of the state of the fact that the declaration has been issued.

(d) The Attorney General shall maintain a list of any persons who request to receive notice of any declaration of temporary suspension and shall furnish notice under subdivision (c) to all these persons immediately upon a superior court declaration. Notice shall also be furnished by the Attorney General by certified mail, return receipt requested (or substantial equivalent if the person who is to receive the notice resides outside the United States), to any known manufacturer and California distributor of the weapon which is the subject of the temporary suspension order or their California statutory agent for service. The notice shall be deemed effective upon mailing.

(e) After issuing a declaration of temporary suspension under this section, the superior court shall set a date for hearing on a permanent declaration that the weapon is an assault weapon. The hearing shall be set no later than 30 days from the date of issuance of the declaration of temporary suspension. The hearing may be continued for good cause thereafter. Any manufacturer or California distributor of the weapon which is the subject of the temporary suspension order has the right, within 20 days of notification of the issuance of the order, to intervene in the action. Any manufacturer or California distributor who fails to timely exercise its right of intervention, or any other person who manufactures, sells, or owns the assault weapon may, in the court's discretion, thereafter join the action as amicus curiae.

(f) At the hearing, the burden of proof is upon the Attorney General to show by a preponderance of evidence that the weapon which is the subject of the declaration of temporary suspension is an assault weapon. If the court finds the weapon to be an assault weapon, it shall issue a declaration that it is an assault weapon under Section 12276. Any party to the matter may appeal the court's decision. A declaration that the weapon is an assault weapon shall remain in effect during the pendency of the appeal unless ordered otherwise by the appellate court.

(g) The Attorney General shall prepare a description for identification purposes, including a picture or diagram, of each assault weapon listed in Section 12276, and any firearm declared to be an assault weapon pursuant to this section, and shall distribute the description to all law enforcement agencies responsible for enforcement of this chapter. Those law enforcement agencies shall

make the description available to all agency personnel.

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 875

An act to repeal and add Chapter 10 (commencing with Section 1770) to Division 2 of the Health and Safety Code, relating to continuing care, and making an appropriation therefor.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Chapter 10 (commencing with Section 1770) of Division 2 of the Health and Safety Code is repealed.

SEC. 2. Chapter 10 (commencing with Section 1770) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 10. CONTINUING CARE CONTRACTS

Article 1. General Provisions

1770. The Legislature finds, declares, and intends all of the following:

(a) Continuing care retirement communities are an alternative for the long-term residential, social, and health care needs of California's elderly residents, seek to provide a continuum of care, minimize transfer trauma, and allow for provision of services in an appropriately licensed setting.

(b) Because elderly residents often expend a significant portion of their savings in order to purchase care in the retirement community and, thereby, expect to receive care at the retirement community for the rest of their lives, tragic consequences can result from a continuing care provider becoming insolvent or unable to provide responsible care.

(c) There is a need for disclosure concerning the terms of

agreements made between prospective residents and the continuing care provider, and concerning the operations of the facility.

(d) Providers of continuing care should obtain a certificate of authority to sell continuing care contracts and be monitored and regulated by the State Department of Social Services.

(e) This chapter applies equally to for-profit and nonprofit provider entities.

(f) This chapter shall be the minimum requirement to be imposed upon any entity offering or providing continuing care, as set forth in this chapter.

(g) Because the authority to enter into continuing care contracts granted by the State Department of Social Services is neither a guarantee of performance by the providers nor an endorsement of contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.

1771. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Annual report" means audited financial statements with an accompanying certified public accountant's opinion thereof, reserve calculations, resident listing, evidence of surety bond, and certification that the contract in use for new residents has been approved by the department, all submitted to the department by each provider annually.

(b) "Applicant" means any entity that submits an application to the department for a permit to sell deposit subscriptions and certificate of authority.

(c) "Basic services" means the following services, which are required to be provided to the residents, as necessary or appropriate, in order to obtain and maintain a license as a residential care facility for the elderly:

(1) Regular observation of the resident's physical and mental condition.

(2) Safe and healthful living accommodations, including housekeeping services and utilities.

(3) Maintenance of house rules for the protection of residents.

(4) A planned activities program, which includes social and recreational activities appropriate to the interests and capabilities of the residents.

(5) Supervision of residents' schedules and activities.

(6) Three balanced, nutritious meals and snacks made available daily, including special diets prescribed by a physician and surgeon as a medical necessity.

(7) Monitoring food intake or special diets.

(8) Personal assistance and care in activities of daily living, such as dressing, grooming, bathing, and other personal hygiene.

(9) Assistance with taking medication.

(10) Central storing and distribution of medications.

(11) Arrangements to meet health needs, including arranging transportation.

(d) "Cancellation" means to destroy the force and effectiveness of an agreement or contract, by making or declaring it void or invalid.

(e) "Cancellation period" means the 90-day period, beginning when the transferor receives a signed copy of the continuing care contract, during which time the resident or transferor may rescind the contract.

(f) "Care" means nursing, medical, or other health related services, protection or supervision, or assistance with the personal activities of daily living, or any combination of those services.

(g) "Certificate" or "certificate of authority" means the written authorization from the department for a specified provider to enter into one or more continuing care contracts at a single specified facility.

(h) "Committee" means the Committee on Continuing Care Contracts of the State Social Services Advisory Board.

(i) "Consideration" means some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.

(j) "Continuing care contract" means a written contract, which includes a promise by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year, in exchange for the payment of an entrance fee, or payment of periodic charges, or both types of payments. A continuing care contract may consist of one or a series of agreements and may have other writings incorporated by reference. A continuing care contract includes a life care contract, as defined in subsection (w).

(k) "Contract" means a continuing care contract.

(*l*) "Department" means the State Department of Social Services.

(m) "Deposit subscription" means the installment payment made by a subscriber to an applicant during development or construction of a facility.

(n) "Director" means the Director of the State Department of Social Services.

(o) "Elderly" means an individual who is 60 years of age or older.

(p) "Entity" means an organization or being that possesses separate existence for tax purposes. Entity includes person, sole proprietorship, estate, trust, association, joint venture, partnership, and corporation.

(q) "Entrance fee" means an initial or deferred transfer of consideration made or promised to be made by a person entering into a continuing care contract, for the purpose of assuring care or related services pursuant to that contract or as full or partial payment for the promise to provide a facility The entrance fee may include previously paid deposit subscriptions, which are credited at the time

of the parties signing the continuing care contracts to the total entrance fee due. The term "accommodation fee" may be synonymously used to mean an entrance fee.

(r) "Equity" means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(s) "Equity project" means a continuing care development project wherein the residents are given an equity interest in the facility property or in a membership in a residence association.

(t) "Escrow agent" means any of the following entities approved by the director as capable of ensuring the safety of the funds and properties entrusted to it and capable and willing to perform the terms of the escrow pursuant to the escrow agreement and the provisions of this chapter:

(1) A bank which is a member of the Federal Deposit Insurance Corporation.

(2) A savings and loan association which is a member of the Federal Deposit Insurance Corporation.

(u) "Facility" means any place or accommodation in which a provider undertakes to provide a resident with care or related services pursuant to a continuing care contract, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider. For the purposes of meeting the enrollment criteria of this chapter, a distinct phase of development may be considered to be the facility when a project is being developed in successive multiple phases over a period of time.

(v) "Installment payment" means one of several successive payments made at previously agreed upon intervals toward the settlement of a debt.

(w) "Life care contract" means a continuing care contract which includes a promise by a provider to provide all levels of care, including acute care and physicians and surgeons' services, to a resident for the duration of his or her life. Care shall be provided in a facility having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on, or adjacent to, the premises. In a life care contract, no change is made in the monthly fee based on level of service. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(x) "Life lease" means a landlord-tenant relationship wherein the tenant obtains only the right to possess a defined living unit for life. In a life lease there is no obligation, or intent, to provide care and services to the tenant at any time, present or future.

(y) "Limit" and "limitation" means a restriction on any activity related to a provisional or final certificate of authority, which prohibits the provider from entering into any new contract.

(z) "Living unit" means a specifically identified apartment, room, or other area within a facility.

(aa) "Market test unit" means a living unit of a facility which is not used exclusively for personal care or nursing services.

(bb) "Membership" means a body, class, or group of individuals admitted to the responsibilities and privileges of the collective whole and typically requiring payment of dues, adherence to a program, or compliance with some other requirements of the group.

(cc) "Monthly care fee" means the monthly charge to a resident for accommodations and services rendered pursuant to a continuing care contract, exclusive of entrance fees or other prepayments, including care, board, or lodging, and any other periodic charges to the resident, determined on a monthly or other recurring basis, pursuant to the provisions of a contract.

(dd) "Monthly fee contract" means a continuing care contract that provides by its terms for the monthly payment of a fee for accommodations and services rendered.

(ee) "Nonambulatory person" means a person who is unable to leave a building unassisted under emergency conditions, as required by Section 13131.

(ff) "Per capita cost" means a facility's operating expenses divided by the average number of residents. Depreciation is excluded when computing cash per capita cost for calculating reserve requirements.

(gg) "Permit to sell deposit subscriptions" means a written authorization by the department for an applicant to enter into one or more deposit subscription agreements at a single specified facility.

(hh) "Personal care" means assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(ii) "Personal care unit" means a living unit within a physical area of a facility specifically designed to provide ongoing personal care.

(jj) "Prepaid contract" means a continuing care contract in which the monthly care fee, if any, may not be adjusted to cover the actual cost of care and services.

(kk) "Processing fee" means an advance payment by the transferor to cover administrative costs of processing the application of a subscriber or prospective resident.

(*ll*) "Promise to provide care" means any representation made by one or more than one entity that care will be provided or will be available, whether the representation is part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral.

(mm) "Proposes" means a representation that an applicant or provider plans to make a future promise to provide care, which may be subject to the happening of certain events, such as facility construction or obtaining a certificate of authority.

(nn) "Provider" means an entity which provides, promises to provide, or proposes to promise to provide, care for life or for more than one year, and has obtained a provisional or final certificate of authority. Homeowner's associations, cooperatives, or condominium

associations cannot be solely responsible for fulfilling the obligations of any continuing care contract.

(oo) "Refundable contract" means a proposed or current continuing care contract form that includes promises, expressed or implied, to pay refunds of entrance fees or to repurchase the transferor's unit, membership, stock, or other interest in the project or facility, after the end of the trial residence period, in the event of voluntary termination by the transferor or resident, when the specified refund right is not fully amortized within the first six years of residency, or in the event a provider terminates a resident.

(pp) "Refund reserve" means the amount calculated and deposited in a special trust fund to ensure the availability of funds for specified refunds of entrance fees.

(qq) "Resident" means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(rr) "Subscriber" means a person who has applied to be a resident in a facility under development or construction, and who has entered into a deposit subscription agreement.

(ss) "Termination" means the ending of a contract without the terms of the contract being broken by either side.

(tt) "Transfer" means conveyance of a right, title, or interest.

(uu) "Transfer fee" means a levy against the proceeds from the sale of a transferor's equity interest.

(vv) "Transfer trauma" means death, depression, or regressive behavior, caused by the abrupt and involuntary transfer of an elderly resident from one home to another, resulting in a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relatives who may be unable to reach the new facility.

(ww) "Transferor" means a person who transfers or promises to transfer a sum of money or property for the purpose of assuring care or related services pursuant to a continuing care contract, whether for the benefit of the transferor or another.

1771.2. (a) No entity proposing to promise to provide care shall enter into a deposit subscription agreement or sell a deposit subscription unless the entity has a current and valid permit to sell deposit subscriptions.

(b) No continuing care contract shall be executed, unless the provider has a current and valid provisional or final certificate of authority.

(c) If a provider subcontracts or assigns to another entity the responsibility to provide continuing care, that other entity shall have a current and valid certificate of authority, except that the provider holding a certificate of authority may contract for the provision of a particular aspect of continuing care, such as medical care, with another entity that does not possess a certificate of authority, if that

other entity is appropriately licensed under laws of this state to provide that care, and that care is not paid for more than one year in advance.

(d) If an entity enters into an agreement to provide care for life or for more than one year to a person under 60 years of age in return for payment of an entrance fee or periodic charges, and the agreement includes the provision of services to that person after age 60, the entity shall either terminate the contract or meet all requirements of this chapter when the first such person turns 60 years of age.

(e) Homeowner's associations, cooperatives, or condominium associations shall not be solely responsible for fulfilling the obligations of any continuing care contract and shall only be issued a certificate of authority in conjunction with another responsible entity.

1771.4. Any entity which promises to provide care for life or for more than one year in return for payment of an entrance fee or periodic charges from, or on behalf of, a person 60 years of age or older shall first obtain written licenses for the entire facility pursuant to Chapter 3.2 (commencing with Section 1569), and Chapter 2 (commencing with Section 1250) if a skilled nursing facility is on the premises.

1771.6. (a) This chapter does not apply to any of the following:

(1) Any arrangement for the care of a person by a relative.

(2) Any arrangement for the care of a person or persons from only one family by a friend.

(b) Any market test feasibility study during which reservation fees are being collected shall not be considered to be a violation of this chapter, provided that all of the following have occurred:

(1) An application for a permit to sell deposit subscriptions and a certificate of authority for the project has been filed with, and has not been denied by, the department.

(2) The department has completed a review of the application documentation to determine its adequacy.

(3) The amount of each reservation fee does not exceed 1 percent of the average entrance fee.

(4) The reservation fee is placed in escrow.

(5) The escrow agreement provides for a refund within 10 calendar days after the request of a potential resident or within 10 calendar days after denial of the application.

(6) The escrow agreement provides for the conversion of the reservation fee to a deposit subscription when a permit to sell deposit subscriptions is issued.

1771.7. (a) The department may issue a limited certificate of authority to any equity project constructed and occupied prior to January 1, 1987, and offering a care program in connection with the sale of residential units. The department may specify any limitations on this certificate of authority at the time of its issuance.

(b) To qualify for a limited certificate of authority, an equity

project shall file an application with the department pursuant to Section 1779.2. The application also shall include all of the following:

(1) A Letter of Non-applicability, written to the project by the department prior to January 1, 1987, declaring the life care laws to be inapplicable to the project.

(2) A detailed description of the program, demonstrating that the program has not changed since the date of the Letter of Non-applicability.

(3) The project's continuing care contract that has been modified to disclose the limitations imposed on the limited certificate of authority.

(c) An application under this section shall be exempt from the requirement of the application fee specified in subdivision (d) of Section 1779.2.

1771.8. Any entity which believes its project is not subject to this chapter or which is contemplating a project which it believes may not be subject to this chapter, may apply to the department for a Letter of Non-applicability. The application shall be in writing and shall list the reasons why the existing or proposed project may be exempt.

1772. (a) Except as otherwise provided in paragraph (5) of subdivision (a) of Section 1788, no report, circular, public announcement, certificate, financial statement, or any other printed matter or advertising material, or oral representation, which lists or refers to the name of any entity, including, but not limited to, registered charities, religious organizations, and corporate entities, shall be used to solicit or induce persons to enter into continuing care contracts, unless there is on file with the department a written and legally sufficient document of acceptance of full responsibility and liability by the entity for the contracts.

(b) On written appeal to the department, and for good cause shown, the department may, in its discretion, allow an affinity group exemption from this section. If an exemption is granted, every continuing care contract shall include a conspicuous statement which clearly informs the transferor that such entity is not financially responsible.

1773. No certificate of authority has value for sale or exchange as property. No provider shall sell or transfer ownership of the facility or enter into a contract with a third party entity for management of the facility without the approval of the department.

1774. 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.

1775. (a) This chapter is in addition to, and does not supersede, any other provision of law or regulations adopted pursuant thereto which are as strict or stricter.

(b) To the extent that this chapter conflicts with the statutes and regulations enforced by the Department of Real Estate, this chapter shall have precedence.

(c) Notwithstanding any law or regulation to the contrary, in an equity project, the provider may restrict or abridge the right of the owner of an equity interest to sell or lease the equity interest, and may require that the owner sell or lease the equity interest only to persons approved by the provider. Provider approval may be based on factors which include, but are not limited to, age, health status, and financial status. Any restrictions shall be recorded by the provider.

(d) To the extent that this chapter conflicts with Sections 51.2 and 51.3 of the Civil Code, this chapter shall have precedence. A continuing care facility, at its discretion, may limit entrance based on age.

(e) This chapter imposes minimum requirements upon any entity undertaking the responsibility for providing one or more elements of care to an elderly person for the duration of his or her life or for a term in excess of one year, in exchange for any prepayment or transfer of property prior to the services actually being rendered, whether or not the prepayment or transfer of property is supplemented with periodic or other payments.

(f) This chapter shall be liberally construed for the protection of persons attempting to secure their care for the remainder of their lifetime or for a period in excess of one year.

1776. The department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable regulations as may be necessary or proper to carry out the purposes and intent of this chapter and to protect the rights of the elderly.

1776.2. The department may, by any duly authorized representative, inspect and examine any continuing care facility, including the books and records thereof, or the performance of any service required by the continuing care contracts.

1776.4. The department may contract with any entity to provide consultation services. In providing the services, the entity shall conform to the requirements of this chapter and to the rules, regulations, and standards of the department. The department shall reimburse an entity for services performed pursuant to this section.

1776.6. (a) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), the following documents are public information and shall be provided upon request: audited financial statements, compliance or noncompliance with reserve requirements, whether an application for a Permit to Sell Deposit Subscriptions and Certificate of Authority has been filed, whether a permit or certificate has been granted or denied, and the type of care offered by the provider.

(b) Resident data used in the calculation of reserves shall be regarded by the department as confidential.

1777. (a) The Committee on Continuing Care Contracts of the State Social Services Advisory Board shall act in an advisory capacity to the department on matters relating to continuing care contracts.

(b) The members of the committee shall include:

(1) Three representatives of nonprofit providers of continuing care contracts pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment.

(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services.

(3) A certified public accountant with experience in the community care industry, who is not a provider of continuing care services.

(4) One representative of a for-profit provider of continuing care contracts pursuant to this chapter.

(5) An actuary.

(c) Committee members shall be appointed pursuant to Section 10700 of the Welfare and Institutions Code, except that the Senate Rules Committee shall appoint one member pursuant to paragraph (2) of subdivision (b) and the Speaker of the Assembly shall appoint one member pursuant to paragraph (2) of subdivision (b).

1777.2. (a) Notwithstanding Section 10700 of the Welfare and Institutions Code, the Committee on Continuing Care Contracts shall:

(1) Review the financial and managerial condition of each facility operating under a certificate of authority.

(2) Review the financial condition of any facility that the committee determines is indicating signs of financial difficulty and may be in need of close supervision.

(3) Monitor the condition of facilities at times and places as the department or the chair of the committee may direct.

(4) Make available consumer information on the selection and necessary contract protections in the purchase of life care contracts.

(5) Review new applications regarding financial, actuarial, and marketing feasibility as requested by the department.

(b) The committee shall make recommendations to the department regarding needed changes in its rules and regulations and upon request provide advice regarding the feasibility of new facilities and the correction of problems relating to the management or operation of any facility. The committee shall also perform any other advisory functions necessary to improve the management and operation of continuing care facilities.

(c) The committee may report on its recommendations directly to the director.

(d) The committee may hold meetings, as deemed necessary to the performance of its duties.

1777.4. Any member of the Committee on Continuing Care Contracts is immune from civil liability based on acts performed in

his or her official capacity. Costs of defending civil actions brought against a member for acts performed in his or her official capacity shall be borne by the complainant. However, nothing in this section immunizes any member for acts or omissions performed with malice or in bad faith.

1778. (a) There is hereby created in the State Treasury a fund which shall be known as the Continuing Care Provider Fee Fund. The fund shall consist of fees received by the department pursuant to Sections 1779.2 and 1791. Notwithstanding Section 13340 of the Government Code, the Continuing Care Provider Fee Fund is hereby continuously appropriated, without regard to fiscal years, to the department for the purpose of funding all of the following:

(1) Statistical and actuarial studies for use by providers and for program management by the department.

(2) Contracts with technically qualified persons, as necessary to provide advice regarding the feasibility of proposed facilities.

(3) Development of improved systems and procedures of the department for carrying out the responsibilities imposed by this chapter, in consultation with the Committee on Continuing Care Contracts.

(b) The department may engage private financial, actuarial, and marketing consultants to review applications for permits to sell deposit subscriptions and certificates of authority, and shall use the funds from fees received pursuant to this section to the extent necessary to engage these consultants.

(c) The department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(d) Use of the funds appropriated pursuant to this section is limited to assisting the department in reviewing the ability of applicants and providers to fulfill the requirements of this chapter.

(e) If the balance in the Continuing Care Provider Fee Fund is projected to exceed five hundred thousand dollars ($500,000) for the next budget year, the department shall adjust the calculations for the application fees under Section 1779.2 and annual fees under Section 1791 to reduce the amounts collected.

Article 2. Application

1779. (a) An application for a permit to sell deposit subscriptions and certificate of authority shall be filed with the department, as set forth in this chapter, in any of the following circumstances:

(1) Prior to entering into any continuing care contracts or any deposit subscription agreements.

(2) Prior to initiating construction of a prospective continuing care facility.

(3) Prior to initiating construction on a new phase or expansion of an existing continuing care facility.

(4) Prior to converting an existing structure to a continuing care facility.

(b) If the provider undergoes an organizational change, including, but not limited to, a change in structure, separation, or merger, a new application shall be required and a new certificate of authority must be issued by the department before any continuing care contracts may be executed by the new entity.

(c) A new application is not required for an entity name change, if there is no change in the entity structure or management. If the provider undergoes a name change, the provider shall notify the department of the name change and shall return the previously issued certificate of authority for reissuance under the new corporate name.

1779.2. (a) A formal application shall be made by a person or organization to the department for a permit to sell deposit subscriptions and certificate of authority, as provided in this chapter. The application shall be completed on forms prescribed by the department.

(b) A separate application shall be required for each proposed project.

(c) The application shall be signed under penalty of perjury by the applicant, if an individual, or the chief executive officer of the applicant, and certified by the oath of the applicant or the chief executive officer of the applicant, stating that to the best of his or her knowledge and belief, the items are correct.

(d) An application fee shall be required whenever a provider applies for a permit to sell deposit subscriptions and certificate of authority with respect to a facility for which a certificate of authority has not previously been issued.

(1) The application fee shall be calculated and submitted to the department as follows:

(A) Each application shall be accompanied by payment to the Continuing Care Provider Fee Fund of 80 percent of the application fee, which is calculated, for purposes of this paragraph, as one-tenth of 1 percent of the purchase price of the facility, or the estimated construction cost, including the purchase price of the land or the present value of any long-term lease. Processing of the application shall not begin until this fee is received.

(B) Payment to the Continuing Care Provider Fee Fund of the remainder of the application fee shall be made at or before the time of issuance of the provisional certificate of authority. For purposes of this paragraph, the application fee shall be calculated as one-tenth of 1 percent of the purchase price of the facility, or the actual construction cost, including the purchase price of the land or the present value of any long-term lease, less the payment included with the application. The provisional certificate of authority shall not be issued until the balance of the fee is paid.

1779.4. (a) An application shall contain all of the following:

(1) The name and business address of the applicant.

(2) The name, address, and a description of the physical property of the facility.

(3) The estimated number of residents of the facility to be provided services by the applicant pursuant to the continuing care contracts.

(4) A description of the proposed project, including the services and care to be available for residents or provided to residents, or both.

(5) A statement indicating whether the application is for a life care facility.

(6) Documentation evidencing a preliminary approval for licensure from the State Department of Social Services, Community Care Licensing Division, or the Licensing and Certification Division of the State Department of Health Services, as appropriate.

(7) If the applicant is an individual, a statement disclosing any revocation or other disciplinary action taken, or in the process of being taken, against a license, permit, or certificate held or previously held by the applicant.

(8) A description of any matter in which any principal involved with the project has been convicted of a felony or pleaded nolo contendre to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property. For the purpose of this paragraph, "principal" means any person having any decisionmaking authority for any aspect of the project.

(9) If the applicant is an entity other than an individual, the following information also shall be submitted:

(A) A statement naming the type of legal entity and listing the interest and extent of the interest of each principal in the legal entity. For the purposes of this paragraph, "principal" means any person or entity having a 10 percent or more financial interest in the legal entity or, if the legal entity is a trust, each beneficiary of the trust holding a 10 percent or more beneficial interest in the trust.

(B) The names of the members of the board of directors, the trustees, the managing partners, or other responsible officers of the legal entity.

(C) A statement as to whether the applicant was or is affiliated with a religious, charitable, nonprofit or for-profit organization, the extent of any affiliation, and the extent, if any, to which the affiliate organization will be responsible for the financial and contract obligations of the applicant.

(D) If an affiliate organization will be responsible for the financial contract obligations of the applicant, a statement to that effect by the affiliate organization, signed by a responsible officer of the affiliate organization.

(E) If the applicant is a subsidiary corporation or the affiliate of another corporation, a statement identifying the parent corporation or the other affiliate corporation, the primary activities of the parent or other affiliate corporation, and the interest in the applicant held by the parent or other affiliate corporation.

(F) Copies of all contracts, management agreements or other documents, setting forth the relationships of the entities.

(G) A statement as to whether the applicant, a principal, a parent, affiliate, or subsidiary corporation, or any other affiliate entity, or any responsible employee, manager, board member, or anyone who otherwise profits from the facility, has had applied against it, any injunctive or restrictive order of a court of record, or any suspension or revocation of any state or federal license, permit, or certificate, arising out of or relating to business activity of health or nonmedical care, including, but not limited to, actions affecting a license to operate a health care institution, a nursing home, an intermediate care facility, a hospital, or a home health agency, residential care facility for the elderly, community care facility, or child day care facility.

(10) A description of the business experience of the applicant in the operation of similar facilities and, if the facility will be managed on a day-to-day basis by a corporation or organization other than the applicant, a description of the business experience of the manager in the operation and the management of similar facilities.

(11) A copy of any advertising material regarding the proposed project prepared for distribution or publication.

(12) Evidence of the bonds required by Section 1789.8.

(13) Copies of the proposed continuing care contracts to be entered into with residents of the facility.

(14) A copy of the proposed deposit subscription agreement form.

(15) The name of the proposed escrow agent.

(16) Copies of all escrow agreements.

(17) A statement of any periodic fees to be paid by residents, the components and services considered in determining such fees, and the manner by which the provider may adjust these fees in the future. If the facility is already in operation, or if the provider operates one or more similar facilities within this state, the statement shall include tables showing the frequency and each percentage increase in periodic rates at each facility for the previous five years, or such shorter period as each facility may have been operated by the provider or his or her predecessor in interest.

(18) A statement of the provisions that have been made, or will be made, to provide reserve funding or security by the provider to enable the provider to fully perform his or her obligations pursuant to continuing care contracts, including, but not limited to, the establishment of escrow accounts in financial institutions, trusts, or reserve funds.

(19) A copy of audited financial statements for the three most recent fiscal years of the applicant or any shorter period of time the applicant has been in existence, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants. The audited financial statements shall be accompanied by a statement signed and dated by both the chief

financial officer and chief executive officer that the financial statements are complete, true, and correct in all material matters to the best of their knowledge.

(20) If the applicant's fiscal year ended more than 90 days prior to the date of filing, there shall also be included unaudited interim financial statements, either quarterly or monthly, prepared on the same basis as the annual audited financial statements or other basis acceptable to the department covering the period between the end of the most recent fiscal year for which audited financial statements are submitted and a date not more than 90 days prior to the date the application is filed.

(21) A financial and marketing feasibility study prepared by a firm acceptable to the department. The study shall include or address, as appropriate, all of the following items:

(A) A narrative describing the applicant, its prior experience, qualifications, and management, including a descriptive analysis of the project and its service package, fee structure, and anticipated opening date.

(B) A narrative describing the financing and construction plans for the project, including a statement of the anticipated source and application of the funds to be used in the purchase, lease, rental, or construction. This statement shall include, but not be limited to, all of the following:

(i) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing. This indebtedness shall not exceed the appraised value of the facility.

(ii) Equity to be contributed by the applicant.

(iii) Other sources of funds, including entrance fees, if applicable.

(iv) An estimate of the cost of purchasing, leasing, renting, designing, or constructing and equipping the facility, including, but not limited to, such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs which the provider expects to incur, or become obligated for, prior to the commencement of operation.

(v) Interest expense, insurance premiums, and property taxes prior to opening.

(vi) An estimate of any project reserves required for items such as debt service, insurance premiums, and operations.

(vii) An estimate of any funds which are anticipated to be necessary to fund startup losses and to assure full performance of the obligations of the provider pursuant to continuing care contracts, including, but not limited to, any reserve fund escrow.

(C) An analysis of the potential market, addressing such items as:

(i) Service area, including its demographic, economic, and growth characteristics.

(ii) Forecasts of penetration based on the proposed fee structure.

(iii) Existing and planned competition in and about the primary service area.

(D) A detailed description of the sales and marketing plan, addressing such items as:

(i) Marketing schedule, anticipated sales, and cancellation rates.

(ii) Month-by-month forecast of unit sales through sellout.

(iii) A marketing plan describing the methods, staffing, and advertising media.

(iv) An estimate of the total entrance fees to be received from residents prior to completion of occupancy.

(E) Projections of move-in rates, deposit subscription fee collections, couple mix by unit type, age distribution, care and nursing unit utilization, and unit turnover or resale rates.

(F) A description or analysis of development-period costs and revenues. This item should be provided to the department on a quarterly basis, throughout the development of the project.

(22) Projected annual financial statements for a period commencing on the first day of the first fiscal year, following the most recent year for which an audited financial statement has been provided, through at least the fifth year of operations.

(A) The projected annual financial statements shall be on an accrual basis using the same accounting principles and procedures as the audited financial statements furnished pursuant to paragraph (19), but need not be audited.

(B) Separate projected annual cash-flow statements shall be provided. The statements shall cover the entire duration of debt, and be presented on a quarterly basis during the pre-opening, construction, and fill-up periods.

(i) The projected annual cash-flow statements shall be submitted, using prevailing rates of interest, with no increase of revenues and expenses due to inflation, as one set of assumptions.

(ii) The projected annual cash-flow statements shall include the following:

(I) A detailed listing, including a full explanation of all assumptions used in preparing the projections, plus supporting supplementary schedules and calculations, all to be consistent with the financial and marketing feasibility study furnished pursuant to paragraph (21), as may be required by the department for use in evaluating the feasibility of the project.

(II) Cash flows from monthly operations, including, but not limited to, monthly fees received from continuing care contracts, medical unit fees if applicable, other periodic fees, and gifts and bequests used in operations less operating expenses.

(III) Contractual cash flows from activities, including, but not limited to, presales, deposit subscription receipts, sales, and resales of continuing care contracts less contract acquisition, selling, and advertising expenditures.

(IV) Cash flows from financing activities, including, but not limited to, bond or loan proceeds less bond issue or loan costs and fees, debt service including CAL Mortgage Insurance premiums, trustee fees, principal and interest payments, leases, contracts, rental

agreements, or other long-term financing.

(V) Cash flow from investment activities, including, but not limited to, construction progress payments, architect and engineering, furnishings, and equipment not included in the construction contract, project development, inspection and testing, marketable securities, investment earnings, and interfund transfers.

(VI) Increase or decrease in cash during the projection period.

(VII) The beginning cash balance, which means cash, marketable securities, reserves, and other funds on hand available and committed to the project.

(VIII) Cash balance at the end of the period.

(IX) Details of the components of the ending cash balance shall be provided for each period presented, including, but not limited to, the ending cash balances for bond reserves, other reserve funds, deposit subscription funds, and construction funds balance.

(C) If the cash-flow statements required by paragraph (B) indicate that the provider will have cash balances over and above two months' projected operating expenses of the facility, a description of the manner in which the cash balances will be invested, and the persons who will be making the investment decisions, shall accompany the application.

(D) The applicant shall furnish further explanatory information, schedules, and calculations as required by the department on actuarial data used to project occupancy rate, unit type and couple mix, sex, age, and turnover, refund, and sales rate subscription collection rates, a detailed operating budget, and projections of cash required for major repairs and improvements or on any other factor considered during the projected periods.

(23) A declaration acknowledging the requirement of executing and recording a Notice of Statutory Limitation on Transfer (hereinafter referred to as the notice), relating to facility property pursuant to this section.

(A) The notice shall be acknowledged so as to entitle it to be recorded, describe the property, declare the provider's intention to use all or part of the described property for the purposes of a continuing care facility pursuant to this chapter, and shall be in substantially the following form:

NOTICE OF STATUTORY LIMITATION ON TRANSFER

Notice is hereby given that the property described below is licensed, or proposed to be licensed, for use as a continuing care facility and accordingly, the use and transfer of the property is subject to the conditions and limitations as to use and transfer set forth in Sections 1773 and 1789 4 of the Health and Safety Code. This notice is recorded pursuant to paragraph (23) of subdivision (a) of Section 1779.4 of the Health and Safety Code.

The real property, which is legally owned by (insert the name of the legal owner) and is the subject of the statutory limitation to

which this notice refers, is more particularly described as follows: (Insert the legal description and the assessor's parcel number of the real property to which this notice applies.)

(B) The notice shall remain in effect until notice of release is given by the department. The department shall execute and record a release of the notice upon proof of complete performance of all obligations to transferors.

(C) Unless a notice has already been recorded with respect to the land on which the provider is operating or intends to operate a continuing care facility, prior to the date of execution of any trust deed, mortgage, or any other lien or encumbrance, securing or evidencing the payment of money and affecting land on which the provider intends to operate a continuing care facility, the provider shall give the department written notice of the proposed encumbrance. Upon the giving of notice to the department, the provider shall execute and record the Notice of Statutory Limitation on Transfer in the office of the county recorder in each county in which any portion of the continuing care facility is located.

(D) In the event that the provider and the owner of record are not the same entity or individual on the date on which execution and recordation of the notice is required, the provider shall serve a copy of the notice on the owner of record by certified mail.

(E) The notice shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record and the name of the provider.

(24) A statement that the applicant will keep the department informed of any changes to the project plan as reflected in the application form and attachments.

(25) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

1779.6. (a) Within seven calendar days of receipt of an initial application for a permit to sell deposit subscriptions and certificate of authority, the department shall acknowledge receipt of the application in writing.

(b) Within 20 calendar days of receipt of an application, the department shall determine if the application is complete. This review need not include a review of the adequacy of the documentation submitted. Based on this review, the department shall do one of the following:

(1) Notify the applicant of additional forms, documents, information, or materials required to comprise a complete application and allow the applicant adequate time to submit the requested information or materials.

(2) Determine that the application is complete as submitted.

(c) Within 120 calendar days from the date the department determines that an application is complete, the department shall act to approve the application or determine the application is incomplete, notify the applicant of what is required for

completeness, and give the applicant an opportunity to submit additional documentation.

(1) During this period, the department shall do all of the following:

(A) Review the application for adequacy and completeness.

(B) Review the application for compliance with this chapter.

(C) Review the financial plan for feasibility.

(D) If necessary, request expert consultants to review portions of the application and advise the department of their opinions.

(E) Prepare a summary of services to be offered or made available to residents of the facility.

(2) Prior to denying an application for any inadequacy in the application or documentation, the department shall notify the applicant of the specific deficiency and give the applicant an opportunity to respond.

(d) Within 15 calendar days of the response from the applicant regarding any inadequacy in the application, the department shall act to issue the permit to sell deposit subscriptions and certificate of authority, or to deny the application.

1779.8. (a) The applicant shall notify the department of changes in the information submitted by the applicant to the department in the application materials.

(b) No less than 60 calendar days prior to an applicant making any changes in the applicant's corporate name, structure, organization, operation, or financing, the applicant shall give written notice of these proposed changes to the department. This notice requirement does not apply to mere facility staff changes.

(c) Within 30 calendar days after receiving notice of the proposed change, the department shall inform the applicant of any additional or amended information needed to process the pending application, or whether a new application must be submitted.

(d) Failure to give written notice of changes required by this section shall result in suspension of the permit to sell deposit subscriptions, pending the outcome of an investigation by the department into the effect of the changes on the interests of the subscribers.

1779.10. (a) The department shall deny an application for a permit to sell deposit subscriptions and certificate of authority if any of the following exists:

(1) Failure to pay the application fee as required by Section 1779.2.

(2) Failure to submit all information required by this chapter.

(3) Failure to submit evidence to support a reasonable belief that any principal of the project who has committed any offenses listed in paragraph (8) of subdivision (a) of Section 1779.4 is of such good character to indicate rehabilitation.

(4) If an action specified in paragraph (7) of subdivision (a) of Section 1779.4 and subparagraph (G) of paragraph (9) of subdivision (a) of Section 1779.4 has been taken against an applicant and the

applicant has failed to submit evidence to support a reasonable belief that the applicant is capable of administering the project in compliance with applicable laws and regulations.

(5) Failure to demonstrate the feasibility of the proposed project plan.

(b) If the application is denied, the previously paid application fee shall not be refunded.

(c) Immediately upon the denial of an application, the department shall notify the applicant in writing.

(d) The Notice of Denial from the department shall contain all of the following:

(1) State that the application is denied.

(2) List the reasons for the denial.

(3) Explain the right of appeal.

(4) State that the applicant has 30 calendar days from the date that the Notice of Denial was mailed to appeal the denial, and where to send the appeal.

(e) If the applicant appeals the denial, further proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Article 3. Deposit Subscription Period

1780. (a) The department shall issue a permit to sell deposit subscriptions when all requirements therefor have been met.

(b) The permit to sell deposit subscriptions shall be valid for 60 months, until revoked, or until a provisional certificate of authority is issued.

(c) The holder of a permit to sell deposit subscriptions shall comply with all of these requirements.

1780.2. (a) A deposit subscription may be made in one or several payments, to begin at the time the parties enter into the deposit subscription agreement.

A deposit subscription shall be paid by check, draft, or money order, payable to the applicant and the escrow agent.

(b) A processing fee may be added to the deposit subscription.

(1) The processing fee shall not exceed 1 percent of the amount of the average entrance fee.

(2) The processing fee may be paid directly to the applicant.

(c) Payments made to the applicant from a subscriber for upgrades or modifications to the living unit shall not be placed in escrow with deposit subscriptions. Written refund policies shall be given to the subscriber.

1780.4. (a) All deposit subscription agreements entered into between the applicant and the subscriber shall be in writing and shall contain all information required by this section.

(b) All deposit subscription agreement forms shall be approved by the department prior to their use.

(c) The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval of the forms by the department.

(d) All text in deposit subscription agreement forms shall be printed in at least 10-point boldface type to highlight terms and conditions as required.

(e) The deposit subscription agreement form shall provide for all of the following:

(1) An estimated date for completion of the project, not to exceed 60 months from the date the permit to sell deposit subscriptions is issued.

(2) Identification of the specific unit subscribed to and the total deposit subscription for that unit.

(3) Processing fee terms and conditions, including:

(A) The amount, which shall be subject to approval by the department.

(B) A statement explaining the applicant's policy regarding refund or retention of the processing fee in the event of death of the subscriber or voluntary cancellation by the subscriber.

(C) Notice that the processing fee shall be refunded within 30 days, in the event that the subscriber is not accepted for occupancy, or if the facility is not constructed by the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(4) Requirements for payment of the deposit subscription by the subscriber.

(5) Refund of the deposit subscription within 30 calendar days of notice of death of the subscriber or his or her nonacceptance for residency.

(6) Refund of the deposit subscription within 10 calendar days of notice of voluntary cancellation by the subscriber. However, once construction begins and until the facility is in operation, refunds shall be made only after another subscriber has reserved the specific unit and paid the necessary deposit subscription, or the subscriber no longer meets financial or health requirements for admission.

(7) A statement to subscribers that specifies when funds may be released from escrow and explains that thereafter subscriber funds will not have escrow protection and that any refunds will come solely from the resale of their specific unit.

(8) A statement regarding whether interest will be paid to the subscriber on deposit subscription funds placed in an escrow account.

1781. (a) All deposit subscriptions, excluding reasonable processing fees to cover costs, shall be placed in an escrow account, the terms of which must be approved in advance by the department.

(b) The escrow account shall be established in a California bank, California savings and loan association, or California trust company acceptable to the department. The funds deposited therein shall be kept and maintained in an account separate and apart from the

applicant's business accounts.

(c) Funds shall remain in escrow until the department has authorized their release in accordance with Section 1783.2.

(d) Deposit subscriptions placed in escrow accounts shall be placed in a custodial account under the control of the escrow department of a bank acceptable to the department and invested in instruments guaranteed by, or agencies of, the federal government or by investment funds secured by federally guaranteed instruments.

(e) No funds deposited in an escrow account shall be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditor's claims against the provider or facility.

1781.2. Payments pursuant to deposit subscriptions shall be deposited with the escrow agent within five business days after their receipt from subscribers and shall be accounted for separately by the applicant. Deposits shall be accompanied by a copy of the executed deposit subscription agreement, a copy of the receipt given to the subscriber, a summary of all deposits made on that date, and any requirement of the escrow holder.

1781.4. (a) The escrow agreement shall provide for all of the following:

(1) The amount of the processing fee, which is to be excluded from the escrow account, if the processing fee is paid with the deposit.

(2) Deposit of funds in the escrow account.

(3) Monthly progress reports, beginning the month after the escrow account is opened and ending after funds are released from escrow, shall be sent by the escrow agent directly to the department. These reports shall show all of the following:

(i) The name and address of each subscriber or resident.

(ii) The designation of the living unit being provided.

(iii) The total deposit subscription for the unit.

(iv) Amounts deposited or refunded (in a separate column for each payment prescribed in the deposit subscription agreement).

(v) The unpaid balance of the deposit subscription.

(vi) The current balance in the escrow account.

(4) Investment of escrow account funds.

(5) Release of escrow account funds as specified in Section 1783.2, including to whom payment of interest earned on such funds will be made.

(b) The escrow agreement shall state that the escrow agent for the project shall neither be a lender nor have fiduciary responsibilities to lenders or bondholders for that project.

1781.6. Changes to deposit subscription agreement or escrow agreement forms shall require prior approval by the department.

1781.8. (a) As instructed by the applicant, funds placed in escrow accounts may be invested as provided under subdivision (d) of Section 1781.

(b) Earnings shall not be released except upon approval of the department.

(c) Approval by the department of the release of earnings from funds in escrow shall be based upon an assessment that funds remaining in the escrow account will be sufficient to pay refunds and interest promised, if any, to all subscribers, and all escrow agent administrative costs.

(d) Interest shall be distributed in accordance with the terms of the escrow agreement.

1781.10. No moneys or other consideration, while in escrow, shall be encumbered or used as collateral for any obligation of the applicant or any other person, unless the encumbrance or use as collateral is subordinate to the rights of transferors for refunds under this chapter.

1782. (a) An applicant shall not begin construction of a continuing care facility or prospective continuing care facility without the written acknowledgment of the department that all of the following prerequisites have been met:

(1) A completed application has been submitted to the department.

(2) A permit to sell deposit subscriptions has been issued.

(3) At least 20 percent of each applicable entrance fee has been received for at least 60 percent of the number of market test units projected to be occupied six months after the facility has opened for operation.

(b) Applicants shall notify subscribers in writing of the commencement of construction.

1783. (a) No building, which has been constructed by the applicant or related parties without prior written approval of the department for commencement of construction, shall be permitted to be converted to a continuing care facility until five years have elapsed from the completion of construction.

(b) If existing buildings are to be converted to a continuing care use, no deposit subscription shall be received by an applicant unless the applicant has agreed to keep deposit subscriptions in escrow until the requirements of Section 1786 have been met. This section shall not apply to expansions of existing continuing care facilities.

1783.2. (a) Refunds to subscribers shall be disbursed as follows:

(1) Except as provided in paragraph (2), the escrow agent shall pay refunds to subscribers who cancel a deposit subscription agreement, upon written notice to the escrow agent from the applicant, in accordance with the approved deposit subscription agreement. These refunds shall be paid within 10 days after the subscriber gives notice to the applicant.

(2) After notice to subscribers of commencement of construction, a subscriber shall not be entitled to a refund of deposit subscriptions until the facility is opened for operation, another subscriber has reserved the specific residential unit and paid the necessary deposit subscription, or the subscriber no longer meets financial or health requirements for admission, whichever occurs first.

(b) Releases to applicants shall be as follows:

The department shall instruct the escrow agent to release to the applicant all deposit subscriptions, which have been placed in escrow pursuant to Section 1781 when all of the following requirements have been met:

(1) The construction of the facility is at least 50 percent completed and at least 20 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of market test units, which have been reserved and are not awaiting refunds.

(2) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.

(3) The department, in consultation with the Committee on Continuing Care Contracts, has determined that there has been substantial compliance with projected annual financial statements, which served as a basis for issuance of the permit to sell deposit subscriptions.

(4) Compliance with licensing requirements in a timely manner.

(5) A commitment satisfactory to the department has been received by the applicant for any permanent mortgage loan or other long-term financing.

(6) Compliance with any additional requirements for release of funds placed in escrow accounts, established by the department pursuant to Section 1785.

1784. (a) If the project is not completed within 60 months from the date the permit to sell deposit subscriptions is issued, an applicant may request an extension of the permit to sell deposit subscriptions. The request for extension shall be made to the department in writing and shall state the reasons why the project was not completed within the 60-month time period, and the new estimated date for completion.

(b) If the project is not completed within 60 months from the date the permit to sell deposit subscriptions is issued, the department may do either of the following:

(1) If the department determines there is satisfactory cause for the delay in completion of the project, the department may extend the permit to sell deposit subscriptions for any reasonable time period.

(2) If the department determines that there is no satisfactory cause for the delay, the department may instruct the escrow agent to refund to subscribers all deposit subscriptions held in escrow, plus any interest due under the terms of the deposit subscription agreements.

(c) The applicant shall notify each subscriber of any extensions of the date of completion of the project beyond the date specified in the agreement, of any expiration of the permit to sell deposit subscriptions, and of any right to a refund of their deposit subscription.

1785. (a) If, at any time prior to issuance of a certificate of

authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department, after consultation and upon consideration of the recommendations of the Committee on Continuing Care Contracts, may take any of the following actions:

(1) Cancel the permit to sell deposit subscriptions.

(2) Increase the required percentages of construction completed, units reserved, or entrance fees to be deposited as required under Sections 1782, 1783.2, 1786, and 1786.2.

(3) Increase the reserve requirements under this chapter.

(b) Prior to taking any actions specified in subdivision (a), the department shall give the applicant an opportunity to submit a feasibility study from a consultant in the area of continuing care, approved by the department, to determine whether in his or her opinion the project is still viable, and if so, to submit a plan of correction. The department, in consultation with the committee, shall determine if the plan is acceptable.

(c) In making its determination, the department shall take into consideration the overall performance of the project to date.

(d) If consideration has been released from escrow, the department may further require the applicant to reopen the escrow as a condition of receiving any further entrance fee payments from subscribers or residents.

Article 4. Certificate of Authority

1786. (a) In order to permit an applicant to enter into continuing care contracts and meet the requirements of paragraph (2), the department shall issue a provisional certificate of authority when a provider has done all the following:

(1) Met and continues to meet the requirements of Section 1783.2.

(2) Completed construction of the facility or applicable phase.

(3) Obtained the required licenses.

(4) Complied with the approved marketing plans.

(5) Paid the remainder of the application fees.

(6) Executed a permanent mortgage loan or other long-term financing.

(7) Met all applicable provisions of this chapter.

(b) The provisional certificate of authority shall be valid for a period of 12 months after issuance. Upon a showing of good cause by the provider, the department may extend a provisional certificate of authority for a period not to exceed 12 months, if it appears to the department that the applicant is capable of meeting the requirements of Section 1786.2 during the period of extension.

(c) All holders of a provisional certificate of authority shall comply with all requirements of this chapter.

(d) All holders of a provisional certificate of authority shall request in writing a final certificate of authority when the requirements of Section 1786.2 have been met.

1786.2. (a) A certificate of authority shall not be issued to a provider, unless the department determines that all of the following have occurred:

(1) A provisional certificate of authority has been issued.

(2) One of the following requirements has been met:

(A) At a minimum, contracts have been executed for 80 percent of the total market test units in the facility, with payment in full of the entrance fee.

(B) At a minimum, contracts have been executed for 70 percent of the total market test units in the facility, with payment in full of the entrance fee, and the provider has submitted a financial and marketing plan, satisfactory to the department, demonstrating that the project will be financially viable.

(C) At a minimum, contracts have been executed for 50 percent of the total market test units in the facility, with payment in full of the entrance fee, and the provider furnishes a letter of credit or other security, satisfactory to the department, sufficient to bring the total amount of payments to a level equivalent to 80 percent of the total entrance fees for the entire facility.

(3) A minimum 5-year financial plan of operation remains satisfactory to the department.

(4) Adequate reserves exist as required by Sections 1792.2 and 1793. For a new facility without an operating history, the department may approve calculation of required reserves on a pro forma basis in conjunction with compliance with approved marketing plans.

(5) All applicable provisions of this chapter have been met.

(b) When issued, the certificate of authority shall remain in full force unless suspended, limited, or revoked by the department pursuant to Section 1794.16.

Article 5. Contract

1787. (a) All continuing care contracts entered into between the provider and the transferor shall be in writing and shall contain all information required by Section 1788.

(b) All continuing care contract forms shall be approved by the department prior to their use.

(c) The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval by the department.

(d) The contract shall constitute the full and complete agreement between the parties.

(e) More than one contract form may be used if multiple program options are available.

(f) All text in contract forms shall be printed in at least 10-point boldface type to highlight terms and conditions as required.

(g) A clearly legible copy of the continuing care contract, with no blank spaces, executed by the provider and a transferor, shall be furnished, with all required or included attachments to the

transferor at the time the continuing care contract is executed and shall be furnished within 10 calendar days to the resident if the resident is other than the transferor.

(h) The provider shall require a written acknowledgment from the transferor (and the resident, if other than the transferor) that the executed copy of the contract and attachments have been received.

(i) The continuing care contract shall constitute an admissions agreement for purposes of the residential care facility for the elderly and long-term health care facility requirements. Continuing care contracts which cover long-term health care facility services shall not be subject to Chapter 3.95 (commencing with Section 1599.60).

1788. (a) Any continuing care contract shall contain all of the following:

(1) The legal name and address of the provider.

(2) The name and address of the facility.

(3) The resident's name and address.

(4) If the transferor is someone other than the resident, the transferor's name and address shall be separately designated.

(5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the transferor that the organization is not financially responsible.

(6) The date the contract is signed by the transferor.

(7) The duration of the contract.

(8) A list of the basic services to be provided to the resident.

(9) A list of all basic services for which charges in excess of the monthly fee will be made and the fees at the date of the contract for those services.

(10) The procedures and conditions under which residents may be voluntarily or involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall provide for all of the following:

(A) When, in the opinion of, at a minimum, the facility management, a physician and surgeon, appropriate specialist, or licensing official, any of the following conditions exist:

(i) The resident is nonambulatory. The definition of nonambulatory, as defined in Section 13131, shall either be stated in the contract or be cited, with a copy of it made available, as an attachment or by specifying that it will be provided upon request. If the resident occupies a room that has a fire clearance for nonambulatory residence, provision for transfer under the above circumstances is unnecessary.

(ii) Resident becomes mentally ill.

(iii) Transfer to the facility's skilled nursing facility or personal care unit is required for more efficient care and/or to protect the health of other residents, or because the level of care needed cannot

lawfully be provided in the living unit.

(iv) Transfer to a nursing home or hospital is required and the provider has no facilities available for such care.

(B) Provision for transfer of a second resident when a shared accommodation arrangement is terminated.

(C) When transfer is requested or required for any other reason.

(11) Provisions for any change in the monthly rate and any refund of entrance fees when a resident transfers from any unit.

(12) The obligations of the provider in the event a resident is transferred.

(13) Whether the provider has any responsibility to resume care.

(14) The obligations of the provider for services provided while the resident is absent from the facility.

(15) The conditions under which the resident permanently releases his or her living unit.

(16) All real and personal properties transferred, their value at the time of transfer, and how the value was ascertained.

(A) An itemized receipt which includes the information described above is acceptable, if incorporated as a part of the contract.

(B) With respect to the transfer of real property, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "continuing care contract" and may be subject to rescission by the transferor within 90 days from the date of the transfer.

(C) The failure to comply with this paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the contract shall define the allocation of fees.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For contracts which require a monthly care fee or other periodic rate, the contract shall provide statements concerning all of the following:

(A) That the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) Whether payment will be made in advance or after services have been provided.

(D) Whether any adjustment in the monthly care fees is to be made by the provider for the support, maintenance, board, or lodging, which is supplied to a resident who requires medical attention when he or she is absent from the facility.

(E) If any credit or allowance is to be given to a resident who is absent from the facility or from meals, and if such credit is to be

permitted at the discretion or by special permission of the provider.

(22) All contracts shall specify one of the following basic methods for calculating changes in monthly care fees:

(A) For prepaid contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.

(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee contracts, changes in monthly fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) The contract shall provide for notification of the resident at least 30 days in advance of any change in the scope or price of any component of care or other services.

(24) The contract shall include a provision indicating whether the resident's rights under the contract include any proprietary interests in the assets of the provider or in the facility, or both.

(25) If there is a loan on the property, the contract shall advise residents that rights they may have to enforce continuing care contracts are subordinate to the rights of the lender.

(26) Notice that the living units are licensed as residential care facilities for the elderly and, as such, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor, that provides as follows: "You, the transferor, may cancel the transaction without cause at any time within 90 days from the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(28) Notice that during the cancellation period, the contract may be cancelled by the provider without cause.

(29) The terms and conditions under which the contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that involuntary termination of the resident by the provider after the cancellation period shall be only for good and sufficient cause.

(31) A statement that at least 90 days written notice is required for an involuntary termination.

(32) A statement concerning the length of notice that is required by a resident for the voluntary termination after the cancellation period.

(33) The policy for refunding any portion of the entrance fee, in the event of cancellation, termination, or death.

(34) The following notice at the bottom of the signatory page:

"NOTICE" (date)

This is a continuing care contract as defined by Section 1771(j) or 1771(w) of Chapter 10 of Division 2 of the California Health and Safety Code. This contract form has been approved by the State Department of Social Services as required by Section 1787(b) of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has complied with specific requirements of the statutes. Approval by the department is neither a guaranty of performance nor an endorsement of contract provisions. Prospective transferors and residents are encouraged to carefully consider the benefits and risks of this contract before signing. You should seek financial and legal advice as needed.

(b) The contract may include, but is not limited to, and need not include, any of the following items:

(1) Provision for a resident who becomes financially unable to pay for his or her monthly care fees at some future date to be subsidized. If provision for subsidizing a resident is included, the following provisions may be included:

(A) A stipulation that the resident shall apply for any public assistance or other aid for which eligible and that the provider may apply on behalf of the resident.

(B) A stipulation that the provider shall be the final and conclusive determining body of any adjustments to be made or any action to be taken regarding any charitable consideration to be extended to any of its residents.

(C) Provision for the payment or entitlement of actual costs of care from any property acquired by the resident subsequent to the adjustment, as provided in subparagraph (B), or from any property not disclosed by the resident at the time of application.

(D) Provision that the provider may pay the monthly premium of the resident's health insurance coverage under Medicare to ensure that such payments will be made.

(E) Provision that the provider may receive an assignment from the resident of the right to apply for and to receive such benefits, for and on behalf of the resident.

(F) Provision that the provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is available from any governmental agency.

(2) Provisions which limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In such cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the contract or in the medical report, which may be

attached to and made a part of the contract.

(3) Legal remedies which may be applied in case any material misrepresentation or omission pertaining to assets or health has been made by the resident.

(4) A clause which restricts transfer or assignments of the resident's rights and privileges under a continuing care contract because of the personal nature of the contract.

(5) A clause for the protection of the provider in instances where it may wish to waive any of the terms or provisions of the contract in specific instances where the resident has breached the contract without relinquishment of its right to insist upon compliance by the resident with all of the other terms or provisions.

(6) Provision for the reimbursement of any loss or damage beyond normal wear and tear suffered by the provider as the result of carelessness or negligence on the part of the resident.

(7) Provision that the resident agrees to observe off-limit areas of the facility as designated by the provider for safety reasons. However, the provider shall not attempt to absolve itself in the contract from liability for past or future negligence by any statement to that effect.

(8) Provision for the subrogation to the provider of the resident's rights in the case of injury to a resident caused as a result of the act or negligence of a third party.

(9) Provision for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Provision that requires the cooperation of the resident in assisting in the diligent prosecution of any claim or action against any third party.

(11) Provision for the appointment of a conservator or guardian by a court of competent jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Provision that, in the event a provider whose property is tax exempt is required to pay property taxes, or in-lieu taxes, the additional costs will be charged to the resident on a pro rata basis.

(13) Other provisions approved by the department.

(c) Every contract shall contain a copy of the current audited financial statement. For a new provider unable to furnish a current audited financial statement, which will accurately reflect the financial ability of the provider to fulfill the continuing care contract promises, this requirement shall include the provider's current audited financial statement, and any supplemental statements that have been submitted to the department after the date of the audited financial statement, together with an additional attachment that discloses all of the following:

(1) That the reserve requirement has not yet been determined or met, but that entrance fees shall be held in escrow until the requirements of Section 1783.2 have been met.

(2) That the ability to provide the services promised in the

continuing care contract will depend on successful compliance with the approved financial plan.

(3) The approved financial plan for meeting the reserve requirements.

(d) Every contract shall contain a completed form in duplicate, captioned "Notice of Cancellation." Such notice shall be attached to the contract, be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

"NOTICE OF CANCELLATION" (date)

/Enter date of transaction/

You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider, and any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated for a reasonable processing fee to cover costs and the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when received.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____

/Name of Provider/

at _____

/Address of provider's place of business/

not later than midnight of _____(date).

I hereby cancel this transaction _____

(Transferor's signature)

1788.2. (a) For nonequity projects, the contract may be canceled without cause by written notice from either party, within 90 days from the date of the transaction.

(b) Death during the cancellation period shall constitute a cancellation, unless a continuing care contract includes specific provisions otherwise.

(c) The cancellation period, and the refund of obligations associated therewith, shall not apply to continuing care contracts executed in conjunction with the purchase of an equity interest in an equity project from a seller, which, for purposes of this section, is limited to a transferor, a transferor's estate, or a trust of which a transferor or transferor's estate is a beneficiary.

(d) Notwithstanding subdivision (c), if the purchaser of an equity interest in an equity project gives the provider written notice of his or her intention to cancel the continuing care contract during the first 90 days following execution of the contract, the provider may not impose a transfer fee which exceeds the difference, if any, between the amount of the sale of the equity interest and the amount the purchaser paid for the interest.

(e) The following fees may be charged during the cancellation period:

(1) If possession of the living unit in a nonequity project is returned to the provider in substantially the same condition as when received, the only obligation incurred by the resident shall be a reasonable fee to cover costs and the reasonable value of services rendered pursuant to the canceled contract.

(2) Under the conditions of the purchase in subdivision (c), an equity project provider may impose a transfer fee on a seller. The transfer fee shall not exceed the difference, if any, between the amount of the sale of the equity interest and the amount the transferor paid for the interest.

1788.4. (a) Any refunds due pursuant to the contract shall be paid within 14 calendar days after making possession of the living unit available to the provider, or within 90 calendar days after cancellation, death, or termination.

(b) If the contract permits involuntary termination of the resident, an amount equal to the difference between the amount paid and the amount used for the care of the resident during the time he or she remains in the facility, based upon the per capita cost to the institution, shall be refunded to the transferor. However, in cases where a consideration greater than the minimum charge has been paid for accommodations above standard, a sum equal to the difference between the amount paid and the ratio of the amount paid to the minimum consideration for standard accommodations, times the current per capita cost to the facility, applied to the period the resident remained in the facility, shall be refunded to the transferor. In calculating the per capita cost, depreciation of real property, improvements, and furnishings may be included, and services in-kind shall be excluded. Per capita cost shall be calculated for each year of residence, except prior year data may be used to calculate refunds in the year of termination.

Article 6. Reporting and Reserve Requirements

1789. (a) Proposed changes of entity name, structure, organization, operation, or financing shall be submitted to the department for review and approval.

(b) The provider shall give written notice of proposed changes to the department no less than 60 calendar days prior to making changes.

(c) This notice requirement does not apply to routine facility staff changes.

1789.2. (a) Any provider contemplating capital financing that would entail a mortgage or deed of trust for any property on which a resident resides pursuant to a continuing care contract shall provide the department with written notification at least 90 calendar days prior to the execution of the proposed transaction which includes all of the following:

(1) A description of the terms and amount of the proposed transaction.

(2) An analysis of the sources of funds for repayment of principal and interest.

(3) An analysis of the impact of the proposed transaction on monthly care fees.

(4) An analysis of the impact that the contemplated encumbrance of real property would have on assets available for statutory reserves required by Section 1792.2, and refund reserves required by Section 1793.

(b) No provider shall execute proposed capital financial transactions without the department's written authorization or until the 90 calendar day period for departmental review has expired.

(c) If the department determines that the proposed capital financial transaction will materially increase monthly fees or impair the provider's ability to maintain required reserves, the department may refuse to approve the transaction, may record a notice of lien on the provider's property pursuant to Section 1794.10 after notifying the provider and giving the provider an opportunity to withdraw the planned transaction, or take any other action that it determines to be in the best interest of the residents.

1789.4. (a) Any provider who voluntarily decides to sell or transfer ownership of a continuing care facility to another party shall first obtain approval from the department.

(b) The provider shall submit written notification to the department at least 90 calendar days prior to execution of the proposed transaction. The notification shall include all of the following:

(1) Identification of the proposed purchaser.

(2) A description of the terms and amount of the proposed transaction.

(3) A plan detailing how fulfillment of existing contract obligations will be ensured.

(c) The provider shall give written notice to all continuing care contract residents and subscribers 60 calendar days prior to the sale or transfer. The notice shall include all of the following:

(1) A description of the parties.

(2) A description of the proposed sale.

(3) A description of the arrangements for fulfilling continuing care contract obligations.

(4) A description of options available to any subscriber or resident who does not wish to have his or her contract assumed by a new provider.

(5) An acknowledgment of receipt of the notice to be signed by the resident.

(d) In the absence of the substitution of a new legal obligor for the provider, the provider shall set up a trust fund or secure a performance bond to ensure the fulfillment of continuing care contract obligations.

(e) The new owner shall obtain a certificate of authority and appropriate licenses, before executing any continuing care contracts, or providing care or supervision, or both, to any residents.

1789.6. All providers shall record and maintain a "Notice of Statutory Limitation on Transfer" as required by paragraph (23) of subdivision (a) of Section 1779.4.

1789.8. (a) Each provider shall obtain and maintain in effect insurance or a surety bond for any agent or employee, who, in the course of his or her agency or employment, has access to any substantial amount of funds. The insurance or surety bond shall be in the form and penal sum as the department finds necessary to protect all persons from loss of funds.

(b) The insurance or surety bond shall be for at least fifty thousand dollars ($50,000) or the amount of the highest entrance fee, whichever is greater, as of the submission date of the annual report.

(c) The insurance or surety bond requirement is separate from the bonding requirements of Residential Care Facility for the Elderly regulations.

1790. (a) Each provider, which has obtained a provisional or final certificate of authority, shall submit an annual report of its financial condition. The report shall consist of audited financial statements with an accompanying certified public accountant's opinion thereon, reserve calculations, resident listings, evidence of surety bond, and certification that the contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status of reserves and on per capita costs of operation for each facility operated.

(3) Any other information as the department may require.

(b) Each provider shall file the annual report with the department within four months after the end of the fiscal year of that provider.

(c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct.

(d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement.

(e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the report from containing a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations.

1791. (a) An annual fee shall be required of each provider which has obtained a provisional or final certificate of authority.

(b) Each annual report submitted pursuant to Section 1790 shall be accompanied by a payment to the Continuing Care Provider Fee Fund in the amount of one-tenth of 1 percent of the portion of total operating expenses, excluding debt service and depreciation from audited financial statements, which has been allocated to continuing care contract residents. The allocation shall be based on the ratio of the mean number of total residents.

1792. (a) Any provider furnishing care pursuant to a prepaid continuing care contract executed after January 1, 1979, shall establish a reserve fund escrow account with an escrow agent, in an amount which equals the aggregate principal and interest, rental, or lease payments due during the next 12 months on account of any first mortgage or other long-term financing of the facility or any leases or other rental agreement for a facility.

(b) The principal of the escrow account may be invested, as provided in subdivision (d) of Section 1792.2 concerning investment of reserve funds, with the earnings thereon payable to the provider.

(c) Amounts not to exceed in the aggregate one-sixth of the total principal may be released to the provider upon notice to the department.

(d) The escrow agreement shall provide all of the following:

(1) That upon withdrawal of any amount by the provider, the escrow agent shall provide immediate written notice of the withdrawal to the department.

(2) That any amount released to the provider shall be repaid to the escrow account within two years of the release of the amount.

(3) That if the provider does not repay the escrow account within

the two-year period, the escrow agent shall provide immediate written notice to the department.

1792.2. (a) Any entity which has executed or assumed continuing care contracts shall maintain reserves covering obligations thereunder.

(b) The following assumptions shall be used when calculating the reserves:

(1) The following table of mortality shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
62	23.392	17.803	82	9.233	7.301
63	22.653	17.289	83	8.713	6.899
64	21.911	16.769	84	8.221	6.500
65	21.167	16.244	85	7.758	6.109
66	20.418	15.715	86	7.335	5.755
67	19.666	15.180	87	6.930	5.432
68	18.910	14.642	88	6.525	5.117
69	18.153	14.099	89	6.128	4.818
70	17.394	13.553	90	5.762	4.551
71	16.636	13.004	91	5.437	4.310
72	15.878	12.452	92	5.126	4.079
73	15.117	11.897	93	4.829	3.859
74	14.387	11.340	94	4.546	3.649
75	13.663	10.780	95	4.276	3.449
76	12.954	10.217	96	4.019	3.258
77	12.293	9.661	97	3.776	3.077
78	11.635	9.146	98	3.544	2.905
79	10.998	8.653	99	3.325	2.742
80	10.391	8.173	100	3.118	2.587
81	9.803	7.717			

This paragraph shall be inoperative when the department adopts a regulation which updates the table of mortality.

(2) A zero life expectancy shall be used for residents over 100 years of age in computing the statutory reserve requirements.

(3) A zero interest assumption shall be used to adjust resident life expectancies in conjunction with the computation of the statutory reserve requirement.

(c) The reserves shall be calculated by progressing through each of the following steps:

(1) Compute net cash per capita costs:

(A) Cash operating expenses: Obtain total operating expenses from the audited income statements. Deduct (i) depreciation and other noncash expenses, (ii) processing fees, (iii) community services, (iv) expenses which will not be incurred in future years, (v) reimbursements for services to nonresidents, (vi) donated services, if included as an operating expense on the income statement, (vii) investment income, (viii) contributions received, and (ix) other

items that the facility reasonably believes should be deducted with accompanying explanation. For a facility in its first year of operation or following a major addition to an existing facility, cash operating expenses for calculating reserve requirements may be classified as fixed or variable and totaled separately.

(B) Mean number of residents by level of care: List the number of residents for each level of care separately at the beginning of the fiscal year. Add the number of residents for each level of care separately at the end of the fiscal year. Divide the total for each level of care by two.

(C) Total mean number of residents: Add the total number of residents at the beginning of the fiscal year to the total number of residents at the end of the fiscal year and divide by two. For facilities wherein resident population fluctuates significantly from month to month and for facilities in their first year of operation, the mean number of residents by level of care or the total mean number, may be computed by adding the number of residents at the end of each month in the fiscal year and dividing by the total number of months included. The daily attendance for the fiscal year may also be used to determine the mean number of residents.

(D) Net cash per capita cost: Cash operating expenses divided by the mean number of residents. It is acceptable, but not required, to compute net cash per capita for various levels of care, based on allocated expenses and contributions from consolidated financial statements. Allocation methods shall be subject to the approval of the department, and schedules shall be prepared for all levels of care, including any levels not covered by life care contracts. For a facility in its first year of operation or following a major addition to an existing facility, net cash per capita cost for calculating reserve requirements may be the sum of the figures determined by dividing fixed cash operating expenses by the number of residents at the end of the fiscal year, and dividing variable cash operating expenses by the mean number of residents.

(2) Compute projected life cost:

(A) Compute aggregate life expectancies: For each resident, compare age against the table of mortality and total all life expectancies.

(B) Multiply net cash per capita costs by aggregate life expectancies.

(3) Compute five-year plan residents: Determine the maximum annual total of SSI/SSP payments for the year of entry for each resident. If that amount is greater than the amount of the entrance fee paid by a resident, the resident is designated a "Five-year Plan Resident" and the entrance fee is amortized over five years. No reserves are required for such residents after the fifth year.

(4) Compute projected life revenue:

(A) Annual fee: Multiply by 12 each monthly fee paid by residents, including payments to be made by third-party payors on behalf of the resident, including SSI/SSP and Medi-Cal, and

contributions, donations, or endowments, which the provider actually used for operating expenditures for continuing care contracts during the fiscal year.

(B) Continuing care residents requiring full reserves: Enter the number of continuing care residents for each annual fee, excluding five-year plan residents.

(C) Aggregate life expectancies: For each resident, compare age against the table of mortality and total all life expectancies for each annual fee.

(D) Total projected life revenue: Multiply each annual fee by aggregate life expectancies. Total the products obtained.

(5) Compute statutory reserve:

(A) Reserves not including five-year plan residents: Deduct the projected life revenue from the projected life cost. If the remainder is less than zero, use zero.

(B) Total statutory reserves: Add the total unamortized balance for five-year plan residents to the remainder in paragraph (A) above.

(6) Compute liquid asset portion of statutory reserve: For providers which have executed monthly fee contracts with at least one-half of the residents, compute 5 percent of the total statutory reserves. For providers which have executed prepaid contracts with at least one-half of the residents, compute 25 percent of the total statutory reserves.

(d) At least 25 percent of the statutory reserve shall consist of liquid assets, as defined in paragraph (9) of subdivision (e), except that a 5 percent requirement shall apply to the facilities which have executed monthly fee contracts with at least 50 percent of the residents.

(e) The assets available for reserves shall consist of the following:

(1) Deposits in commercial and savings accounts with California banks which are members of the Federal Deposit Insurance Corporation.

(2) Investments in certificates issued by California savings and loan associations which are members of the Federal Deposit Insurance Corporation, and have been licensed or chartered to operate, and have conducted business in the State of California for a continuous period of five years or more.

(3) Notes receivable by the facility, which are secured by first deeds of trust and first mortgages on property not owned by the provider or its affiliates.

(4) Stocks, bonds, and securities, at current market value unless otherwise specified, shall meet the following criteria to be approved as assets available for statutory reserves:

(A) Highly liquid money securities, such as United States Treasury Bills, prime banker's acceptances, negotiable time certificates of deposit, and short-term tax-exempt notes.

(B) Common stocks rated "above average" or higher by any national rating agency. For example, a rating of A+, A, A- by Standard and Poor's Corporation is required for common stock.

(C) Bonds issued by the United States government or federal agencies.

(D) Nonfederal bonds that have a current rating of at least "A" by Moody's Investors Service, Standard and Poor's Corporation, or Fitch Investors Service, and are listed on a national securities exchange.

(E) Bonds that are not listed on a national securities exchange, but are traded over-the-counter and have a current rating of at least "Aa" by Moody's Investors Service or at least "AA" by Standard and Poor's Corporation or Fitch's Investors Service.

(F) The security interest in the cash surrender value of life insurance policies assigned by residents to the facility.

(5) Stocks, bonds, and securities that do not meet the approval criteria may be retained as part of the reserves with the specific approval of the department. If necessary to meet reserve requirements, stocks, bonds, and securities that are not approved by the department may be disposed of in a gradual manner, to avoid loss to certificate holders.

(6) Real estate used to provide care and housing for holders of continuing care contracts, or real estate, or equities therein, owned by the entity as an investment, the rents from which are used to discharge obligations to holders of continuing care contracts or to reinvest as a part of the reserves. These investments may be located outside the State of California.

(A) The value of this real estate shall be based on 70 percent of the net equity thereof, which shall be the book or appraised value less any depreciation and encumbrances.

(B) The provider shall request the department's prior written approval of proposed appraisers other than the county assessor or a member of the American Institute of Real Estate Appraisers.

(C) All appraisals shall show the basis and method of valuation. The department may require technical reports to be verified or certified, or both. The expense of any technical reports or any verifications thereof shall be borne by the provider.

(7) Seventy percent of the net equity in furniture and equipment situated on property used to provide care and housing for holders of continuing care contracts.

(8) Investment certificates or shares in open end investment trusts, which meet all of the following requirements:

(A) The trust management shall have experience either managing another mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), or have been registered as an investment advisor under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), and in either case shall currently have at least one hundred million dollars ($100,000,000) under its supervision.

(B) Qualified for sale in California.

(C) Has at least 40 percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or

any of their affiliates.

(D) Is registered under the Investment Company Act of 1940.

(E) Is a fund listed as qualifying under rules maintained by the Commissioner of Corporations in cooperation with the Department of Insurance.

(9) Liquid assets, if any, shall consist of the following:

(A) Listed bonds, stocks, commercial and savings accounts, and savings and loan certificates.

(B) A sinking fund comprised of liquid assets, if it is a replacement fund subject to disbursement for such items as payment of principal and interest on the mortgage or for operations during the succeeding year. Replacement funds, which may only be used for capital improvements or repairs, shall not be included in liquid reserves.

(10) Deposits made prior to signing a continuing care contract represent liabilities and shall be offset against liquid assets, if any, otherwise against any other assets.

(11) Deposits which represent funds turned over to the facility by residents for safekeeping without relinquishing control thereof shall be offset against liquid assets, if any, otherwise against other assets.

1793. (a) Any provider offering a refundable contract, or other entity assuming responsibility for refundable contracts, prior to January 1, 1991, shall maintain a refund reserve bank account in trust for the residents. This trust account shall remain intact to accumulate interest earnings resulting from investments of liquid reserves in accordance with subdivision (d) of Section 1792.2.

(b) The amount of refund reserves shall be calculated based on the following assumptions:

(1) The facility will no longer receive entry fee income after a period of 40 years following the commencement of operation.

(2) Approved long-term investments, such as treasury notes, will earn 3 percent more than the rate of inflation.

(3) Entrance fees will increase at the rate of inflation.

(4) Land values will increase at the rate of inflation.

(5) Investments in the refund reserve trust account will increase at the rate for approved long-term investments.

(c) The amount of refund reserves shall be calculated as follows:

(1) Calculate the number of units to be resold each year at the approved rate of turnover.

(2) Determine the mean entrance fee, as of the current date.

(3) Determine the factor for inflating the mean entrance fee at the rate of 3 percent below the interest rate on new 30-year treasury bonds, for each year from the current date to the 40th year of operation, or until all units have been turned over.

(4) Calculate the inflated mean entrance fees for the 40th year and for each preceding year, until all units have been turned over.

(5) Multiply the inflated mean entrance fee for the 40th year, and each preceding year, as specified in paragraph (4), by the annual turnover, as specified in paragraph (1), until the total of the annual turnovers used in the calculations equals the total number of units

in the facility.

(6) The projected refund liability shall be the sum of the products obtained pursuant to paragraph (5), multiplied by the rate of refund for the seventh year of residency, specified by current contracts, multiplied by the percentage of current continuing care contracts which specify this rate of refund. The projected refund liability amount shall be calculated for each rate, if existing contracts specify several rates.

(7) The projected refund liability, or the aggregate of these liabilities, if several rates are obtained pursuant to paragraph (6), may be reduced by the value of the land used for the facility, inflated to the 40th year of operation, as determined pursuant to paragraph (4), if the provider agrees to a lien pursuant to Section 1794.10 to secure this commitment.

(8) Calculate the present value of the projected refund liability at the current rate of interest for new 30-year treasury bonds. The result is the required refund reserve.

(d) The amount of the refund reserve shall be revised annually by the provider and submitted to the department in conjunction with the annual report required by Section 1790.

(e) Any entity which holds a certificate of authority or permit to sell deposit subscriptions on or before September 23, 1986, shall be exempted from the refund reserve requirement established by this section, if the entity has an equity balance of five times the amount of the refund reserves calculated pursuant to subdivision (c).

(1) The equity balance shall be verified by one or more of the following means:

(A) The "stockholders' equity," or equivalent amount, as reflected on the most recent Form 10K (which may be on a consolidated basis or on a consolidated and combined basis) filed with the Securities and Exchange Commission.

(B) The "total fund balance of net worth," or equivalent amount, as reflected on Form 990 or Form 990-PF filed with the Internal Revenue Service.

(C) The "total net worth," or equivalent amount, as reflected on the most recent Form 109 filed with the Franchise Tax Board.

(2) The amount of the requirement for the equity balance shall be revised annually pursuant to this section.

(3) Compliance shall be based on review, by the department, of financial statements prepared in accordance with generally accepted accounting principles, accompanied by an unqualified opinion by a certified public accountant.

(4) If the equity balance is determined by the department to be less than the required amount, the provider or other entity assuming responsibility shall deposit, in a form satisfactory to the department, an amount equal to the refund reserve required within 60 days.

(f) Each refund reserve trust fund shall be established at an institution qualified to be an escrow agent pursuant to an agreement between the provider and the institution based on this section and

approved in advance by the department.

(1) The agreement shall specify that neither principal nor earnings may be withdrawn from the fund without prior written approval by the department.

(2) Circumstances for approval by the department of withdrawals from the fund shall be limited to a reduction in the refund reserve requirement due to annual determination.

(g) Any provider, which has not executed refundable contracts prior to January 1, 1991, and proposes to execute these contracts after that date, shall submit for the department's approval a method of determining a refund reserve. Approved methods include any of the following:

(1) The establishment of a reserve for the full amount of the refunds promised.

(2) The purchase, from an insurance company authorized to do business in the State of California, of fully paid life insurance policies for the full amount of the refunds promised.

(3) Any method approved by the American Academy of Actuaries in their Actuarial Standards of Practice Relating to Continuing Care Retirement Communities, which method provides for fully funding the refund obligations.

Article 7. Offenses and Penalties

1794. (a) Any entity which sells deposit subscriptions proposing to promise to provide care without having a current and valid permit to sell deposit subscriptions is guilty of a misdemeanor.

(b) Any entity which sells deposit subscriptions and fails to place any consideration received into an escrow account pursuant to this chapter is guilty of a misdemeanor.

(c) Any entity which executes a continuing care contract without holding a current and valid provisional or final certificate of authority is guilty of a misdemeanor.

(d) Each violation of subdivision (a), (b), or (c) is subject to a fine not to exceed ten thousand dollars ($10,000), or by imprisonment in the county jail for a period not to exceed one year, or by both the fine and imprisonment.

(e) Any entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of any printed matter, oral representation, or advertising material which does not conform to the requirements of this section is guilty of a misdemeanor.

(f) Any violation of subdivision (e) shall constitute cause for the suspension of all and any licenses, permits, and certificates of authority issued to such person, organization, provider, association, or corporation by any agency of the state.

1794.2. A permit to sell deposit subscriptions or a certificate of authority shall be forfeited by operation of law prior to its expiration date when any one of the following occurs:

(a) The applicant or provider sells or otherwise transfers the facility or facility property and when the transfer of stock constitutes a major change in ownership.

(b) The applicant or provider surrenders the permit to sell deposit subscriptions or certificate of authority to the department.

(c) The applicant or provider moves a facility from one location to another.

(d) The applicant or provider abandons the facility.

(e) The facility is sold.

(f) The applicant or provider is evicted from the facility premises.

1794.4. (a) Obligations pursuant to continuing care agreements executed by a provider shall be deemed a preferred claim against all assets owned by the provider in the event of liquidation. However, this preferred claim shall be subject to any perfected claims secured by mortgage, deed of trust, pledge, deposit as security, escrow, or otherwise secured.

(b) For purposes of computing the reserve required pursuant to Section 1792.2, the liens required under Section 1794.10 shall not be deducted from the value of real or personal property.

1794.6. (a) Any transfer of money or property, pursuant to a continuing care contract found by the department to be executed in violation of the provisions of this chapter, is voidable at the option of the transferor for a period of 90 days from the execution of the transfer.

(b) No action may be brought for the reasonable value of any services rendered between the date of transfer and the date the transferor disaffirms the contract.

(c) With respect to real property, the right of disaffirmance or rescission is conclusively presumed to have terminated if a notice of intent to rescind is not recorded with the county recorder of the county in which the real property is located within 90 days from the date of execution of the conveyance by the transferor.

(d) Any deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to rescission by the transferor within 90 days from the date of the transfer.

(e) Any transfer of a sum of money or property, real or personal, to anyone pursuant to a continuing care contract that was not approved by the department is voidable at the option of the department or transferor or his or her assigns or agents.

(f) Any transaction determined by the department to be in violation of this chapter is voidable at the option of the transferor or his or her assigns or agents.

1794.8. (a) In either of the following situations the department may require the provider to submit within 60 days a financial plan detailing the method by which the provider proposes to overcome the deficiencies noted by the department.

(1) If a provider fails to file an annual report as required by Section 1790.

(2) At any other time when the department has reason to believe

that the provider is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(b) The department shall approve or disapprove the plan within 30 days of its receipt.

(c) If the plan is approved, the provider shall immediately implement the plan.

(d) If the plan is disapproved, or if it is determined that the plan is not being fully implemented, the department may, after consultation with and upon consideration of the recommendations of the Committee on Continuing Care Contracts, require the provider to obtain new or additional management capability to solve its difficulties. A reasonable period, as determined by the department, shall be allowed to the reorganized management to develop a plan which, subject to the approval of the department and after review by the committee, will reasonably assure that the provider will meet its responsibilities under the law.

1794.10. (a) When necessary to secure the performance of all obligations of the applicant or provider to transferors, the department may record a notice or notices of lien on behalf of the transferors. From the date of recording, the lien shall attach to all real property owned or acquired by the provider during the pendency of the lien, provided such property is not exempt from the execution of a lien and is located within the county in which the lien is recorded. The lien shall have the force, effect, and priority of a judgment lien.

(b) The department shall file a release of the lien if the department deems the lien no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

(c) The applicant or provider may appeal to the department from a refusal of a request for a release of the lien.

(d) The decision shall be subject to court review pursuant to Section 1094.5 of the Code of Civil Procedure, upon petition of the applicant or provider filed within 30 days of service of the decision.

1794.12. (a) When necessary to secure the interests of transferors, the department may require that the applicant or provider reestablish an escrow account, return previously released moneys to escrow, and escrow all future entrance fee payments.

(b) The department may release funds from escrow when it deems the escrow is no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

1794.14. The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

1794.16. (a) The department, in its discretion, may limit, suspend, or revoke any permit to sell deposit subscriptions or

certificates of authority issued under this chapter if it finds any one or more of the following:

(1) Violation by the provider of this chapter or of the rules and regulations adopted under this chapter.

(2) Aiding, abetting, or permitting the violation of this chapter or the rules and regulations adopted under this chapter.

(3) Suspension or revocation of the license of the provider pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(4) Material misstatement, misrepresentation, or fraud in obtaining the permit to sell deposit subscriptions or certificates of authority.

(5) Demonstrated lack of fitness or trustworthiness.

(6) Fraudulent or dishonest practices of management in the conduct of business.

(7) Misappropriation, conversion, or withholding of moneys.

(8) Refusal by the provider to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligations as to such examination, when required by the department.

(9) The provider's unsound financial condition or use of such methods and practices in the conduct of business as to render further transactions by the provider hazardous or injurious to the public.

(10) Failure to maintain at all times at least the minimum statutory reserves required by Section 1792.2.

(11) Failure to maintain the reserve fund escrow account for prepaid continuous care contracts required by Section 1792.

(12) Failure to comply with the refund reserve requirements of Section 1793.

(13) Failure by the provider to maintain escrow accounts for funds as required by this chapter.

(14) Failure to file an annual report as required by Section 1790, after notice that the report is due.

(15) Violation of a limitation on a certificate.

(16) Failure to comply with its approved financial and marketing plan, or secure approval of a modified plan.

(17) A material change or deviation from the approved plan of operation without the prior consent of the department.

(18) Failure by the provider to fulfill its obligations under continuing care contracts.

1794.18. (a) The department shall consult with and consider the recommendations of the Committee on Continuing Care Contracts prior to limiting, suspending, or revoking any permit to sell deposit subscriptions or certificate of authority.

(b) The provider shall have a right of appeal to the department. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all of the

powers granted therein. A suspension, limitation, or revocation shall remain in effect until completion of the proceedings in favor of the provider. In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by a preponderance of the evidence.

(c) The department may, upon finding of changed circumstances, remove a suspension or limitation.

1794.20. (a) During the period that the revocation or suspension action is pending against the permit to sell deposit subscriptions or certificate of authority, the provider shall not enter into any new contracts or deposit subscription agreements.

(b) The suspension or revocation by the department, or voluntary return of the certificate of authority by the provider, shall not release the provider from obligations assumed at the time the continuing care contracts were executed.

1794.22. (a) If the department finds that one or more grounds exist for the discretionary limitation, revocation, or suspension of a permit to sell deposit subscriptions or a certificate of authority issued under this chapter, the department, in lieu of the limitation, revocation, or suspension, may impose a civil penalty upon the provider in an amount not to exceed one thousand dollars ($1,000) per violation.

(b) The civil penalty shall be deposited in a segregated bank account and shall be disbursed for the specific purposes of offsetting the costs of investigation and litigation and to compensate court-appointed administrators when facility assets are insufficient.

1794.24. In the case of any violation or threatened violation of this chapter, the department may institute a proceeding or may request the Attorney General to institute a proceeding to obtain injunctive or other equitable relief in the superior court in and for the county in which the violation occurs, or in which the principal place of business of the provider is located. The proceeding under this section shall conform with the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required of the department in any action commenced under this section, nor shall the department be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage.

1794.26. (a) The district attorney of every county may, upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation of this chapter within his or her county.

(b) This chapter shall not limit or qualify the powers of the district attorney to institute and conduct the prosecution of any action brought for the violation within his or her county of any of the provisions of this chapter or any other provision of law, including, but not limited to, actions for fraud or misrepresentation.

(c) The department shall provide access to any records in its control on request of a district attorney and shall cooperate in any

investigation by a district attorney.

Article 8. Appointment of Administrators

1794.28. (a) The department, after consultation with the Committee on Continuing Care Contracts, may petition the superior court for an order appointing a qualified administrator to operate a facility, and thereby mitigate crisis situations wherein elderly residents are left without means for their support or moved without proper preparation, in any of the following circumstances:

(1) The provider is insolvent or in imminent danger of becoming insolvent.

(2) The provider is in a financially unsound or unsafe condition.

(3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.

(4) A plan, as specified in Section 1794.8, has not been approved by the department or the provider has failed to implement the plan approved by the department.

(5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.

(6) The residents are otherwise placed in serious jeopardy.

(b) The administrator may only assume the operation of the facility in order to either rehabilitate the provider to enable it fully to perform its continuing care contract obligations, implement a plan of reorganization acceptable to the department, facilitate the transition if another provider assumes continuing care contract obligations, or facilitate an orderly liquidation of the provider.

(c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.

(d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's facility or assets should not be vested in an administrator.

(e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.

(f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.

(g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.

(h) If, at the conclusion of the hearing, including such oral evidence as the court shall consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation, and directing the administrator to take

steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

(i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the facility and to other interested persons as the court shall direct.

(j) The court may permit the provider to participate in the continued operation of the facility during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the facility in order to protect the residents of the facility.

1794.30. The department shall maintain a list of qualified persons for use by the courts in appointing an administrator pursuant to this article.

1794.32. If an administrator is appointed to rehabilitate a provider, the administrator may do any of the following:

(a) Take possession of and preserve, protect and recover any assets, books, records, or property of the provider, including, but not limited to, claims or causes of action belonging to, or which may be asserted by, the provider.

(b) Deal with the property in the administrator's name in the capacity as administrator, and purchase at any sale any real estate or other asset upon which the provider may hold any lien or encumbrance or in which the provider may have an interest.

(c) File, prosecute, and defend or compromise any suit or suits which have been filed, or which may thereafter be filed, by or against the provider as necessary to protect the provider or the residents or any property affected thereby.

(d) Deposit and invest any of the provider's available funds.

(e) Pay all expenses of the rehabilitation.

(f) Perform all duties of the provider in the provision of care and services to residents in the facility at the time the administrator takes possession.

(g) Facilitate the orderly transfer of residents should the provider ultimately fail.

(h) Exercise any other powers and duties as may be authorized by law or provided by order of the court.

1794.34. (a) Reasonable compensation shall be paid to the administrator so appointed.

(b) Costs for the compensation shall be levied against the assets of the provider.

(c) Any individual appointed administrator, pursuant to Section 1794.28, shall be held harmless for any negligence in the performance of his or her duties and shall be indemnified by the provider for costs of defending actions brought against him or her in his or her capacity as administrator.

1794.36. (a) The department, administrator, or any interested

person, upon due notice to the administrator, at any time, may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of the provider's property and the conduct of the provider's business.

(b) No such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceeding have been fully and successfully accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, creditors, owners of the facility, and to the public.

(c) An order terminating the rehabilitation proceeding shall be based upon a full report and accounting by the administrator of the conduct of the provider's officers, employees, and business during the rehabilitation and of the provider's current financial condition.

(d) Upon issue of an order terminating the rehabilitation, the department shall reinstate the certificate of authority and may limit, suspend, or revoke the reinstated certificate only upon a change in the conditions at the time of the order or a determination of facts which, if such facts had been known at the time of the order, the court would not have entered the order as determined by the department.

1794.38. (a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the director may, with the approval of the Committee on Continuing Care Contracts, apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issue of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's certificate.

1794.40. (a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the facility has been sold at foreclosure sale, the provider has been declared bankrupt, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) No order shall be granted unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the facility have been protected to the extent possible and has made such orders in this regard as the court deems proper.

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 876

An act to amend Section 23400.1 of, and to repeal Section 23400.3 of, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 23400.1 of the Education Code is amended to read:

23400.1. In addition to any other contributions required by this part, the school districts and other agencies employing members of the State Teachers' Retirement System shall contribute monthly to the Teachers' Retirement Fund 0.25 percent of the total of the salaries upon which members' contributions are based. This subdivision shall become operative July 1, 1986.

SEC. 2. Section 23400.3 of the Education Code is repealed.

CHAPTER 877

An act to amend Section 313.1 of the Penal Code, relating to crime.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 313.1 of the Penal Code is amended to read:

313.1. (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 sells, rents, 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 to the minor shall be punished as specified in Section 313.4.

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 chapter or perform related activities in providing telephone services.

(b) Every person who misrepresents himself or herself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter shall be punished as specified in Section 313.4.

(c) Any person who knowingly displays, sells, or offers to sell in any coin- or slug-operated vending machine or mechanically or electronically controlled vending machine which is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county which restricts the display of material which is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material which advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The failure to create and label the area is an infraction, and is punishable by a fine not to exceed one hundred dollars ($100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

(f) It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant has previously issued the code by

mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(g) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (f) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

CHAPTER 878

An act to add Section 65081.1 to the Government Code, relating to transportation.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 65081.1 is added to the Government Code, to read:

65081.1. (a) After consultation with other regional and local transportation agencies, each transportation planning agency whose planning area includes a primary air carrier airport shall, in conjunction with its preparation of an updated regional transportation plan pursuant to Section 65081, include an airport ground access improvement program.

(b) The program shall address the development and extension of mass transit systems, including passenger rail service, major arterial and highway widening and extension projects, and any other ground access improvement projects the planning agency deems appropriate.

(c) Highest consideration shall be given to mass transit for airport access improvement projects in the program.

(d) If federal funds are not available to a transportation planning agency for the costs of preparing or updating an airport ground access improvement program, the agency may charge the operators of primary air carrier airports within its planning area for the direct costs of preparing and updating the program. An airport operator against whom charges are imposed pursuant to this subdivision shall pay the amount of those charges to the transportation planning agency.

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

local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 879

An act to add Division 33 (commencing with Section 70000) to the Public Resources Code, relating to glass.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

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

(a) The state has established a goal of reducing or recycling 50 percent of its solid waste by the year 2000. The public often opposes the development of new and expanded landfills, while existing landfills continue to close. Therefore, there is an urgent need to minimize the waste going to landfills through recycling.

(b) To maximize recycling, it is essential that products be designed to be recyclable and manufactured from materials which do not contaminate recycling systems.

(c) The use of ceramic materials with glass beverage and food containers presents a barrier to greater recycling. One glass container containing ceramics can contaminate many tons of recyclable glass. Ceramics destroy the lining of glass furnaces and cause cracking within finished glass containers.

(d) It is the purpose of this chapter to prohibit the use of ceramic materials in combination with glass beverage and food containers.

SEC. 2. Division 33 (commencing with Section 70000) is added to the Public Resources Code, to read:

DIVISION 33. GLASS CONTAMINATION

CHAPTER 1. THE CLEAN GLASS RECYCLING ACT OF 1990

Article 1. Title and Definitions

70000. This chapter shall be known and may be cited as the Clean Glass Recycling Act of 1990.

70001. "Beverage or food container" means packaging of finished products which contain food or drink items for retail sale.

Article 2. Ceramic Glass Use

70020. On or after January 1. 1991, it is unlawful to sell, manufacture, or distribute glass beverage or glass food containers which, as part of the product, bear or are attached to ceramic materials. This section does not apply to ceramic enamels used for decorating or labeling glass beverage containers or other glass containers, or to special edition or holiday season distilled spirit containers which are not intended for disposal and are intended to be retained as collectors' items.

Article 3. Penalties

70030. In addition to other applicable civil or criminal penalties, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable by a fine of not more than one thousand dollars ($1,000) per day that the violation continues. Each day of violation is a separate offense.

70031. (a) Any person who violates this chapter is subject to a civil penalty of not more than one thousand dollars ($1,000) per day for each day that the violation continues.

(b) The city attorney or district attorney in whose jurisdiction the violation occurs, or the Attorney General, may petition the superior court to impose, assess, and recover the civil penalties provided in this section.

(c) The penalties under this section are in addition to any other applicable civil or criminal penalties.

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 880

An act to add Section 9250.15 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 9250.15 is added to the Vehicle Code, to read:

9250.15. In addition to any other fees, the department shall, for each original, renewal, and supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4, collect an administrative service fee of one dollar ($1). The money collected by the department pursuant to this section, less the department's administrative costs in collecting and transmitting the money, shall be available, upon appropriation, to the department for payment to the association acting as the repository for the International Registration Plan pursuant to Article 3 (commencing with Section 8000) of Chapter 4. Funds provided to the association under this section shall be used exclusively for the administration and support of reciprocity activities under the International Registration Plan.

CHAPTER 881

An act to amend Section 798.34 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 798.34 of the Civil Code is amended to read:

798.34. (a) A homeowner shall not be charged a fee for a guest who does not stay with him or her for more than a total of 20 consecutive days or a total of 30 days in a calendar year. Such a guest will not be required to register with the management.

(b) A homeowner who is living alone and who wishes to share his or her mobilehome with one person may do so, and a fee shall not be imposed by management for that person. The person shall be considered a guest of the homeowner and any agreement between the homeowner and the person shall not change the terms and conditions of the rental agreement between management and the homeowner. The guest shall comply with the provisions of the rules

and regulations of the mobilehome park.

(c) A senior homeowner in a park which limits residence to adults only may share his or her mobilehome with any person over 18 years of age if that person is providing live-in health care or live-in supportive care to the homeowner pursuant to a written treatment plan prepared by the homeowner's physician. A fee shall not be charged by management for that person. That person shall have no rights of tenancy in the park, and any agreement between the homeowner and the person shall not change the terms and conditions of the rental agreement between management and the homeowner. That person shall comply with the rules and regulations of the mobilehome park. As used in this subdivision, "senior homeowner" means a homeowner who is 55 years of age or older.

CHAPTER 882

An act to add and repeal Section 50662.3 of the Health and Safety Code, relating to mobilehome parks, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 50662.3 is added to the Health and Safety Code, to read:

50662.3. (a) Deferred-payment loans may be made to finance actual costs incurred to correct or eliminate infrastructure or utility system deficiencies which constitute a threat to the health or safety of the residents or to make mobilehome park improvements pursuant to Section 50097. For the purpose of this section, deferred payment loan means a loan on which the payment of principal or interest, or both, is deferred for the term of the loan pursuant to applicable provisions of Section 50668.5. In order to be eligible for assistance, at least 50 percent of the households residing in the park shall be lower income households. At the time of application, the sponsor shall designate the number of spaces which are occupied by lower income households as "assisted spaces" which will be subject to rent and occupancy restrictions for the term of the loan. The percentage of the actual costs funded shall not exceed the ratio of assisted units to all units in the park.

(b) Applications for assistance for rehabilitation or replacement of infrastructure or utilities systems, or both, in mobilehome parks shall be accepted for programs funded with bond funds approved by the voters after January 1, 1990, or other funds specifically appropriated for the purposes of this section or Section 50662.2.

(c) The department is authorized to establish appropriate loan limits for the purposes of this section. The department is authorized to establish rent levels for the assisted spaces which shall in no case exceed the rent levels established pursuant to Section 50668.5.

(d) For purposes of this section, "sponsor" includes any of those organizations or entities set forth in subdivision (c) of Section 50669 and a "mobilehome park" shall be considered a rental housing development pursuant to subdivision (h) of Section 50668.5, provided the spaces are held out for rent or lease, or the park is held as a limited equity cooperative.

(e) The department shall adopt emergency regulations to the extent necessary to implement this section and to ensure that all applicable standards in Section 50668.5 are properly adapted to be consistent with the use of the funds pursuant to this section. The regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, and general welfare within the meaning or purposes of Section 11346.1 of the Government Code.

(f) This section shall remain in effect only until December 31, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 1995, 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 to enable future bond funds to be used to rehabilitate mobilehome parks, this act must become operative before any ballot-approved bond issue, and it is therefore necessary that this act take immediate effect.

CHAPTER 883

An act to add and repeal Article 5 (commencing with Section 10280) of Chapter 5 of Division 9 of the Health and Safety Code, relating to American Indians, and making an appropriation therefor.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

I am deleting the $145,000 General Fund appropriation contained in Section 2 of Senate Bill No 2660

This bill would require the Department of Health Services (DHS) to undertake a three-year, three-phase study to establish more valid vital statistics for American Indians in California and to report on its findings.

The DHS currently provides funding to American Indian organizations for identifying problems of access to care and related issues for California's American Indian population in rural areas These funds can be redirected and used to accomplish the objectives of this bill

With this deletion, I approve Senate Bill No 2660

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Article 5 (commencing with Section 10280) is added to Chapter 5 of Division 9 of the Health and Safety Code, to read:

Article 5. American Indians

10280. The Legislature finds and declares all of the following:

(a) Birth and death certificate-linking studies done by the State Department of Health Services in 1974 and repeated in 1984, show unacceptably high rates of error in the completion of death certificate information recording ethnicity for American Indian infants.

(b) Official vital data on deaths for American Indians in the State of California indicate an implausible death rate equal to one-half of the United States rate for all races and one-quarter of the rate for American Indians in all states.

(c) Good demographic data on the American Indian people within the state does not exist and the data which does exist is fragmented and difficult to access and compile.

(d) The lack of accurate vital data on American Indians in California results in a significant loss of federal funds for the provision of health care and promotion services to American Indian people residing in 37 rural counties within the state.

10281. (a) The Rural Health Division of the State Department of Health Services shall cause to be undertaken a three-year study for the purpose of establishing more valid statistics regarding American Indian death rates, including rates for the 10 leading causes of death for American Indians within the 37 designated rural Indian counties as follows: Humboldt, Shasta, Siskiyou, Modoc, Del Norte, Mendocino, Lake, Sonoma, Glenn, Butte, Colusa, Plumas, Yuba, Yolo, Tehama, Sutter, El Dorado, Nevada, Placer, Sierra, Tulare, Tuolumne, Amador, Mariposa, Calaveras, Fresno, Kings, Madera, Mono, Inyo, Riverside, San Bernardino, Imperial, Lassen, Santa Barbara, Trinity, and San Diego.

(b) This study shall enlist the fullest possible participation of the Indian community and specifically the Indian clinics currently providing health care services to rural Indians of the state. This project shall be administered in a manner which allows for input from, and consultation with, concerned tribes and tribal organizations and American Indian-controlled health care corporations.

(c) This study shall identify methods to improve the quality of official state data on Indian mortality and carry out activities to achieve that goal, including the provision of training and the development of educational materials for morticians and coroners operating within the state.

10282. For the purpose of conducting the three-year study required pursuant to Section 10281, the State Department of Health

Services is hereby encouraged to contract with a federally recognized tribe or tribal organization or an American Indian-controlled health care corporation or research institution having a record of good standing with the Commissioner of Corporations and the Indian Health program within the State Department of Health Services, and established competence in the area of records management.

10283. The study shall be conducted in three phases, as follows:

(a) Phase one of the study shall include research design and data acquisition, including funds for the purchase of data from tribal, federal, state, and county sources and the encoding of this data to a computer-readable form.

(b) Phase two of the study shall include a computerized matching of the American Indian-specific data with the officially known deaths within the state for a selected two-year period, and all necessary statistical analysis and validation of any findings.

(c) Phase three shall include the dissemination of the findings from the study, including efforts to improve the collection of vital event data on the American Indian population within the state.

10284. The State Department of Health Services shall report to the Legislature on or before January 1, 1994, on the implementation of this article and the results of the study required by this article.

10285. 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 enacted before January 1, 1994, deletes or extends that date.

SEC. 2. (a) The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the General Fund to the Rural Health Division of the State Department of Health Services, for the purpose of this act for the first year of implementation. It is the intent of the Legislature that funds to accomplish the purposes of this act in future years be appropriated in future fiscal years in the annual Budget Act in amounts that do not exceed the amount appropriated for these purposes by this act.

(b) Any funds not encumbered in a fiscal year shall be carried over to the next fiscal year.

CHAPTER 884

An act to amend Section 8664.5 of, to add Sections 8664.65 and 8664.67 to, and to add and repeal Section 8664.6 of, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 8664.5 of the Fish and Game Code, as amended by Chapter 25 of the Statutes of 1990, is amended to read:

8664.5. (a) Notwithstanding Sections 8693 and 8724, gill nets and trammel nets shall not be used in those portions of District 17 between a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County and a line extending 252° magnetic from Yankee Point, Carmel Highlands, in Monterey County in waters 30 fathoms or less in depth at mean lower low water.

(b) Notwithstanding Sections 8693 and 8724, gill nets and trammel nets shall not be used in that portion of District 18 north of a line extending due west from Point Sal in Santa Barbara County in waters 30 fathoms or less in depth at mean lower low water. However, the director may, by public announcement, allow the use of gill or trammel nets in all, or any part, of the area of District 18 south of Point San Luis in San Luis Obispo County for a specified period if the director determines, on the basis of written findings, that the use of those nets will not result in any accidental take of sea otters. The director shall immediately rescind the authorization pursuant to this subdivision if the director determines that further use of those nets may result in the accidental entanglement or take of sea otters.

(c) Notwithstanding Sections 8693 and 8724, any person using gill nets or trammel nets in those portions of Districts 17 and 18 from a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County to a line extending due west from Point Sal in Santa Barbara County in waters between 30 fathoms and 40 fathoms in depth at mean lower low water shall comply with all of the following requirements in order to ensure adequate monitoring of fishing effort to protect marine mammals:

(1) Prior to the use, the person shall notify the department that gill nets or trammel nets will be set in the area.

(2) The person shall give adequate notification, as determined by the department, to the department at its office in Monterey or Morro Bay at least 24 hours prior to each fishing trip to ensure full compliance and cooperation with the monitoring program. The department may require that an authorized monitor be on board the vessel. The department shall determine whether on board, at sea, or shoreside monitoring is appropriate. If the authorized monitor is not on board the fishing vessel, the fishing vessel operator and the authorized monitor shall make every effort to remain in radio contact if the radio equipment is made available to the monitor.

(3) To ensure the effectiveness of the monitoring program, gill nets and trammel nets may be set or pulled only between one-half hour after sunrise and one-half hour before sunset.

(4) A permit may be revoked and canceled pursuant to Section

8681 for failure to comply with the department's notification and monitoring requirements.

(d) If the director determines that the use of gill or trammel nets is having an adverse impact on any population of any species of seabird, marine mammal, or fish, the director shall issue an order prohibiting or restricting the use, method of use, size, or materials used in the construction of either or both types of those nets in all or any part of District 10 or 17, or in all or any part of District 18 north of a line extending due west from Point Conception in Santa Barbara County for a specified period. The order shall take effect no later than 48 hours after its issuance. The director shall hold a properly noticed public hearing in a place convenient to the affected area within one week of the effective date of the order to describe the action taken and shall take testimony as to the effect of the order and determine whether any modification of the order is necessary.

(e) For purposes of this section, "adverse impact" means either of the following:

(1) The danger of irreparable injury to, or mortality in, any population of any species of seabird, marine mammal, or fish which is occurring at a rate that threatens the viability of the population as a direct result of the use of gill nets or trammel nets.

(2) The impairment of the recovery of a species listed as an endangered species or threatened species pursuant to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3) or a species of seabird, marine mammal, or fish designated as fully protected under this code, as a direct result of the use of gill nets or trammel nets.

(f) This section does not apply to any gill net with meshes 3½ inches or less in length in any portion of District 18 between Yankee Point in Monterey County and Point Sal in Santa Barbara County.

(g) The department shall explore, as alternatives to the use of gill and trammel nets, commercially viable fishing gear and methods which are not detrimental to the halibut resource or to other marine species, which are consistent with Sections 1700 and 1701, which may be used to take California halibut in areas closed pursuant to this section. The department shall consider issuing experimental gear permits to impacted fishermen pursuant to Section 8606 for authorizing the use of commercially viable alternative fishing gear and methods in the California halibut fisheries in those areas.

SEC. 2. *Section 8664.6 is added to the Fish and Game Code, to read:*

8664.6. (a) For the purpose of advising the department in carrying out subdivision (g) of Section 8664.5, the director shall appoint an advisory committee consisting of nine members from the affected area, as follows:

(1) Five members representing persons taking California halibut with gill or trammel nets, one from each of the five ports affected by the closures established in that section, consisting of Avila Beach,

Morro Bay, Monterey, Moss Landing, and Santa Cruz.

(2) One member representing recreational anglers.

(3) One member representing the sportfishing industry.

(4) One member representing the scientific community.

(5) One member representing environmental organizations.

(b) The members of the advisory committee shall serve without compensation.

(c) The advisory committee shall be overseen by a resource manager appointed by the director. The department shall provide assistance to the advisory committee from the existing resources of the department.

(d) The department shall call and conduct the meetings of the advisory committee, which shall not exceed four meetings per any calendar year.

(e) 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. 3. Section 8664.65 is added to the Fish and Game Code, to read:

8664.65. The Legislature finds and declares that impacted fishermen are experienced in the use of gill and trammel nets and are capable of safely operating in the herring gill net fishery. Notwithstanding any other section in this code, the experience points requirement for eligibility to obtain a herring gill net permit contained in Section 8552.8 shall be waived for impacted fishermen from January 1, 1991, to January 1, 1993.

No herring gill net permit obtained by an impacted fisherman pursuant to this section may be transferred by that person during the first five years that permit is held by that person, except that, in the event of the death of a permittee, the permit may be tranferred pursuant to Section 8104.

Impacted fishermen seeking to obtain herring gill net permits pursuant to this section shall be given preference in obtaining any low-interest loans that may be offered by the state to commercial fishermen, in order to purchase herring gill net permits.

SEC. 4. Section 8664.67 is added to the Fish and Game Code, to read:

8664.67. "Impacted fisherman" for purposes of Sections 8664.5 and 8664.65 means any person who, from January 1, 1986 to December 31, 1990, inclusive, landed a minimum of 1,000 pounds of fish, other than shark or rockfish, in each of at least three calendar years during that period with set gill and trammel nets and landed the fish at ports within areas subject to gill and trammel net closures pursuant to Section 8664.5. Landings shall be verified by the fisherman's submittal of landing receipts as provided in Section 8043.

SEC. 5. One hundred forty-three thousand dollars ($143,000) is hereby appropriated from the California Environmental License Plate Fund to the Department of Fish and Game for the department field office in Morro Bay to monitor, protect, and conduct research

on, the sea otter population.

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 885

An act to amend Sections 81641 and 81645 of the Education Code, relating to community colleges.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 81641 of the Education Code is amended to read:

81641. For the purpose of securing bids or proposals the community college board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county a notice calling for bids or proposals, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids or proposals will be opened. Whether or not bids or proposals are opened exactly at the time fixed in the public notice for opening bids or proposals, a bid or proposal shall not be received after that time.

SEC. 2. Section 81645 of the Education Code is amended to read:

81645. The governing board of any community college district may contract with a party who has submitted one of the three lowest responsible competitive proposals or competitive bids, for the acquisition, procurement, or maintenance of electronic data-processing systems and equipment, electronic telcommunication equipment, supporting software, and related materials, goods, and services, in accordance with procedures and criteria established by the governing board.

CHAPTER 886

An act to amend Section 10176.2 of, and to add Section 10176.25 to, the Insurance Code, relating to insurance.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 10176.2 of the Insurance Code is amended to read:

10176.2. As an alternative to the exclusion permitted by Section 10176, a disability insurance policy may provide that services of a licensed physical therapist, licensed pursuant to Section 2630 of the Business and Professions Code, will be paid only if rendered pursuant to a method of treatment prescribed by a person holding a physician's and surgeon's certificate issued by the Medical Board of California.

SEC. 2. Section 10176.25 is added to the Insurance Code, to read:

10176.25. (a) As an alternative to an exclusion permitted by Section 10176, a disability insurance policy may provide that services of a dietitian or a registered dietitian meeting the qualifications prescribed by Section 2585 of the Business and Professions Code will be paid only if rendered pursuant to a method of treatment prescribed by a person holding a physician's and surgeon's certificate issued by the Medical Board of California.

(b) Nothing in this section requires disability insurers to automatically pay for services provided by a dietitian or a registered dietitian.

CHAPTER 887

An act to amend Section 128.5 of the Code of Civil Procedure, relating to actions.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 128.5 of the Code of Civil Procedure is amended to read:

128.5. (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration

proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

SEC. 2. It is the intent of the Legislature, in adding the new subdivision (d) to Section 128.5 of the Code of Civil Procedure, and in giving judges the capacity to assess punitive damages against a plaintiff, as set out in subdivision (d), that the court will screen these cases carefully in order to ensure that the suit was not filed for a vexatious, fraudulent, malicious, or oppressive purpose.

CHAPTER 888

An act to amend Section 1463.22 of the Penal Code, and to amend Section 16028 of the Vehicle Code, relating to financial responsibility, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1463.22 of the Penal Code is amended to read:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463,

seventeen dollars and fifty cents ($17.50) for each alleged violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and justice courts incurred in administering Sections 16028, 16030, and 16031 of the Vehicle Code. The amount required to be deposited in a special account pursuant to this subdivision shall be deposited regardless of whether the charge is dismissed pursuant to subdivision (e) of Section 16028 of the Vehicle Code or otherwise. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars ($3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department's costs in administering those sections of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

SEC. 2. Section 16028 of the Vehicle Code is amended to read:

16028. (a) Every person who drives a motor vehicle required to be registered in this state upon a highway, or who drives a moped upon the highway, shall, when requested by a peace officer pursuant to subdivision (c) or (d), provide evidence of financial responsibility for the vehicle.

Except as otherwise provided in this subdivision and subdivisions (e) and (f), any person who violates this subdivision is guilty of an infraction and shall be punished for each offense by a fine of ninety-five dollars ($95) and an additional penalty assessment of twenty-five dollars ($25). If (1) the citation is issued pursuant to subdivision (c) on a notice to appear for violation of Section 23152, and (2) the driver is convicted of violating Section 23152, then the penalty upon conviction for violation of subdivision (a) is a fine of two hundred dollars ($200) and an additional penalty assessment of sixty dollars ($60). Each defendant shall be fined and assessed a penalty assessment in the amount specified in this section, upon conviction, unless the court determines that in the interests of justice the fine and the penalty assessment should be reduced. Any

reduction of the fine and penalty assessment shall be in the same proportion and the court shall state the reasons for reducing the fine and assessment on the record.

In lieu of the fine and penalty assessment otherwise assessable under this subdivision, the court may permit the defendant to perform community service designated by the court.

(b) (1) For purposes of this section, "evidence of financial responsibility" shall be in writing and means any of the following:

(A) The name of the insurance or surety company which issued the automobile liability policy, motor vehicle liability policy, or bond meeting the requirements of Section 16056, in effect for the vehicle, and the number of the insurance policy or surety bond.

(B) If the owner is a self-insurer as provided in Section 16052 or a depositor as provided in Section 16054.2, the certificate or deposit number issued by the department.

(C) An insurance covering note, as specified in Section 382 of the Insurance Code.

(D) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(2) For purposes of this section, "evidence of financial responsibility" also includes the identifying symbol issued to a highway carrier by the Public Utilities Commission pursuant to Section 3543 of the Public Utilities Code and displayed on the motor vehicle.

(3) For purposes of this section, "evidence of financial responsibility in writing" may be satisfied by writing the name of the insurance company or surety company and the policy number or surety bond number on the motor vehicle registration card issued by the Department of Motor Vehicles.

(c) Whenever a notice to appear is issued for any alleged violation of this code, except a violation specified in Chapter 9 (commencing with Section 22500) of Division 11 or any local ordinance adopted pursuant thereto, the cited driver shall furnish written evidence of financial responsibility, as defined by subdivision (b), upon request of the peace officer issuing the citation. The peace officer shall request and write the driver's evidence of financial responsibility on the notice to appear, except where the peace officer is unable to write the driver's evidence of financial responsibility on the notice to appear due to an emergency that requires his or her presence elsewhere. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for violation of subdivision (a). The notice to appear for violation of subdivision (a) shall be written on the same citation form as the original violation.

(d) Whenever a peace officer is summoned to the scene of an accident, the driver of any motor vehicle which is in any manner involved in the accident, shall furnish written evidence of financial responsibility as defined by subdivision (b), upon the request of the

peace officer making the report. If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of subdivision (a).

(e) A person cited in a notice to appear for violation of subdivision (a) may personally appear before the clerk of the court, as designated in the notice to appear, and provide written evidence of financial responsibility in a form consistent with Section 16028.4 showing that the driver was in compliance with Section 16020 at the time the notice to appear for violating subdivision (a) was issued. In lieu of a personal appearance, the person may submit written evidence of financial responsibility by mail to the court. Upon receipt by the clerk of written evidence of financial responsibility in a form consistent with Section 16028.4, further proceedings on the notice to appear for the violation of subdivision (a) of Section 16028 shall be dismissed, subject to Section 16031.

(f) If a driver cited for a violation of subdivision (a) is, at the time of issuance of the notice to appear, driving a motor vehicle owned, operated, or leased by the employer of the driver and driven with the permission of the employer, this section and Sections 16031 and 16032 apply to the employer rather than the driver. In that case, the notice to appear shall be issued to the employer, rather than the driver, and the driver may sign the notice to appear on behalf of the employer and shall notify the employer of the citation within five days after the issuance thereof.

(g) Penalty assessments collected pursuant to subdivision (a) shall be deposited in the county's Courthouse Temporary Construction Fund established pursuant to Section 76001, 76002, 76003, 76004, 76005, or 76006 of the Government Code.

(h) Any penalty assessment imposed pursuant to any other provision of law shall not be imposed on the additional penalty assessment provided in subdivision (a).

(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. 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 sufficient funding, at the earliest possible time, for courts, counties, and cities to enforce the Robbins-McAlister Financial Responsibility Act (see Section 1, Chapter 1322, Statutes of 1984), to help ensure that California motorists possess automobile insurance which is required to drive a vehicle in this state, it is necessary that this act, which increases certain penalty assessments, take effect immediately.

CHAPTER 889

An act to add and repeal Section 446.95 of the Health and Safety Code, relating to bone marrow donors, and making an appropriation therefor.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

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

(a) Since 1968, bone marrow transplantation has been identified as an effective treatment for leukemia and other hematologic diseases.

(b) HLA-compatibility is essential for a bone marrow transplant to be successful.

(c) Less than 35 percent of leukemia patients have an HLA-compatible family member.

(d) Several bone marrow transplant centers have explored the potential of using HLA-matched, volunteer unrelated donors when an acceptable family member donor does not exist, and preliminary results have been encouraging.

(e) Although any race can donate and receive blood, the characteristics of the immune system and bone marrow classification are genetically linked. Therefore, bone marrow transplant recipients need donors of the same race.

(f) Only one in 20,000 potential donors is a suitable HLA-match for any given bone marrow recipient.

(g) Since racial minorities represent a very small percentage of the identified potential bone marrow donor pool, leukemia patients from racial minority groups have greater difficulty in finding potential bone marrow donors.

(h) It is the intent of the Legislature to establish a demonstration project administered by the Office of Statewide Health Planning and Development for the purpose of identifying potential bone marrow donors from racial minority groups.

SEC. 2. Section 446.95 is added to the Health and Safety Code, to read:

446.95. (a) The Office of Statewide Health Planning and Development shall administer demonstration projects to increase the awareness within ethnic minority communities of the shortage of potential bone marrow donors and to promote activities which will increase the pool of potential bone marrow donors within those communities.

(b) The office shall award one-time grants to nonprofit blood collection centers which are members of the California Blood Bank System and are located in the Counties of San Diego, Orange, Los

Angeles, Fresno, and Sacramento, and the City and County of San Francisco. The funds shall be used for outreach purposes, including, but not limited to, public education, publicity, translation services, staffing of mobile or satellite collection sites, and to offset the cost of HLA-typing. Grants to nonprofit blood collection centers located in any single county shall not exceed a total of twenty thousand dollars ($20,000).

(c) In order to be eligible for funds, a center shall do both of the following:

(1) Provide matching funds of one dollar ($1) from private donations, the center's existing operating funds, or other public grants or funds for each two dollars ($2) provided to the center by the office pursuant to this section.

(2) Establish a volunteer advisory committee for each targeted minority community, consisting of members of that community.

(d) The office shall prepare a report of its findings and recommendations concerning the demonstration projects and submit the report to the Governor and the Legislature on or before June 30, 1992.

(e) Any demonstration project operated under this section shall be deemed to be successful to the extent that each blood collection center which receives a one-time grant from the office increases its pool of potential bone marrow donors from racial minority groups by 50 percent from January 1, 1991, to March 1, 1992.

(f) This section shall become inoperative on June 30, 1992, and, as of January 1, 1993, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1993, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the Health Data and Planning Fund, established pursuant to Section 439 of the Health and Safety Code, to the Office of Statewide Health Planning and Development for the purpose of funding demonstration projects administered pursuant to Section 2 of this act.

CHAPTER 890

An act to add Section 1161.1 to the Code of Civil Procedure, relating to real property.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1161.1 is added to the Code of Civil Procedure, to read:

1161.1. With respect to application of Section 1161 in cases of

possession of commercial real property after default in the payment of rent:

(a) If the amount stated in the notice provided to the tenant pursuant to subdivision (2) of Section 1161 is clearly identified by the notice as an estimate and the amount claimed is not in fact correct, but it is determined upon the trial or other judicial determination that rent was owing, and the amount claimed in the notice was reasonably estimated, the tenant shall be subject to judgment for possession and the actual amount of rent and other sums found to be due. However, if (1) upon receipt of such a notice claiming an amount identified by the notice as an estimate, the tenant tenders to the landlord within the time for payment required by the notice, the amount which the tenant has reasonably estimated to be due and (2) if at trial it is determined that the amount of rent then due was the amount tendered by the tenant or a lesser amount, the tenant shall be deemed the prevailing party for all purposes. If the court determines that the amount so tendered by the tenant was less than the amount due, but was reasonably estimated, the tenant shall retain the right to possession if the tenant pays to the landlord within five days of the effective date of the judgment (1) the amount previously tendered if it had not been previously accepted, (2) the difference between the amount tendered and the amount determined by the court to be due, and (3) any other sums as ordered by the court.

(b) If the landlord accepts a partial payment of rent, including any payment pursuant to subdivision (a), after serving notice pursuant to Section 1161, the landlord, without any further notice to the tenant, may commence and pursue an action under this chapter to recover the difference between the amount demanded in that notice and the payment actually received, and this shall be specified in the complaint.

(c) If the landlord accepts a partial payment of rent after filing the complaint pursuant to Section 1166, the landlord's acceptance of the partial payment is evidence only of that payment, without waiver of any rights or defenses of any of the parties. The landlord shall be entitled to amend the complaint to reflect the partial payment without creating a necessity for the filing of an additional answer or other responsive pleading by the tenant, and without prior leave of court, and such an amendment shall not delay the matter from proceeding. However, this subdivision shall apply only if the landlord provides actual notice to the tenant that acceptance of the partial rent payment does not constitute a waiver of any rights, including any right the landlord may have to recover possession of the property.

(d) "Commercial real property" as used in this section, means all real property in this state except dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code, mobilehomes as defined in Section 798.3 of the Civil Code, or recreational vehicles as defined in Section 799.24

of the Civil Code.

(e) For the purposes of this section, there is a presumption affecting the burden of proof that the amount of rent claimed or tendered is reasonably estimated if, in relation to the amount determined to be due upon the trial or other judicial determination of that issue, the amount claimed or tendered was no more than 20 percent more or less than the amount determined to be due. However, if the rent due is contingent upon information primarily within the knowledge of the one party to the lease and that information has not been furnished to, or has not accurately been furnished to, the other party, the court shall consider that fact in determining the reasonableness of the amount of rent claimed or tendered pursuant to subdivision (a).

CHAPTER 891

An act to add Article 5 (commencing with Section 25547) to Chapter 6.95 of Division 20 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. (a) The Legislature finds and declares that a reduction in the use of hazardous materials has a significant potential for resolving many of the hazardous materials problems facing the state.

(b) The Legislature further finds that limited capacity exists within the state which explicitly focuses on research and dissemination of information on hazardous materials use reduction in a manner which makes widespread the significant potential of this approach.

(c) It is, therefore, the intent of the Legislature to establish an appropriate entity within the state, which may include an institute, to implement the functions proposed in Section 25547.1 of the Health and Safety Code. In enacting this section, the Legislature requests that the University of California study the feasibility of establishing an institute which has as its focus the many possibilities and benefits of research and dissemination of information on hazardous materials use reduction.

(d) It is further the intent of the Legislature that any future institute or other program that may be established include in its advisory capacity a broad range of the public with a demonstrated expertise, interest, and involvement in hazardous materials use reduction.

(e) It is further the intent of the Legislature that the report

undertaken by the University of California pursuant to this act involve a broad range of community participation, particularly involving those with interest and experience in hazardous materials use reduction.

SEC. 2. Article 5 (commencing with Section 25547) is added to Chapter 6.95 of Division 20 of the Health and Safety Code, to read:

Article 5. Hazardous Materials Use Reduction Institute

25547. For the purposes of this article the following definitions apply:

(a) (1) "Hazardous materials use reduction" means inplant changes in production processes or raw materials that reduce, avoid, or eliminate the use of hazardous materials, or the generation of hazardous by-products per unit of product, so as to reduce risks to the health of workers, consumers, or the environment, without shifting risks between workers, consumers, or parts of the environment. Hazardous materials use reduction shall be achieved through any of the following techniques:

(A) Input substitution, which means replacing a hazardous material or raw material used in a production process with a nonhazardous or less hazardous material.

(B) Product reformulation which means substituting for an existing end product an end product which is nonhazardous or less hazardous upon use, release, or disposal.

(C) Production process redesign or modification, which means developing and using production processes of a different design than those currently used.

(D) Production process modernization, which means upgrading or replacing existing production process equipment and methods with other equipment and methods based on the same production process.

(E) Improved operation and maintenance controls of production process equipment and methods, which means modifying or adding to existing equipment or methods, including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods.

(F) Recycling, reuse, or extended use of hazardous materials by using equipment or methods which become an integral part or the production process of concern, including, but not limited to, filtration and other closed-loop methods.

(2) "Hazardous materials use reduction" does not include promoting or requiring incineration, the transfer from one medium of release or discharge to other media, offsite hazardous waste recycling, or any method of treating hazardous waste at the end of the production process.

(b) "Institute" means the Hazardous Materials Use Reduction Institute specified in Section 25547.1.

25547.1. It is the intent of the Legislature that the University of California enhance its research and teaching activities relating to hazardous materials use reduction, and to examine the feasibility of establishing a hazardous materials use reduction institute within the University of California. To accomplish this purpose, the university is requested to report to the Legislature by March 1, 1991, on the following:

(a) Existing research and teaching programs within the university that promote an understanding of hazardous materials use reduction and which develop new processes and materials to promote hazardous materials use reduction techniques used by industry.

(b) The feasibility of establishing a Hazardous Materials Use Reduction Institute that encourages and coordinates research, teaching, and training in hazardous materials use reduction, which may include, but not be limited to, the fields of engineering, environmental health and safety, and occupational health and safety.

(1) The report shall evaluate possible functions to be provided by such an institute, including the following:

(A) Providing general information about, and actively publicize the advantages of and developments in, hazardous materials use reduction, and the requirements of this chapter.

(B) Establishing courses, seminars, updates, guidelines, and other publications, and other means of providing technical information for hazardous materials users, including small quantity users, and, as appropriate, work in cooperation with the department.

(C) Developing and providing undergraduate curriculum and training for students and faculty on hazardous material use reduction.

(D) Establishing and providing for a hazardous materials use reduction postgraduate education and research program for both of the following purposes:

(i) To train students who seek graduate level educational training and advanced degrees in hazardous materials use reduction.

(ii) To train professionals to be qualified to assist businesses or business groups to reduce the use of hazardous materials.

(E) Providing onsite technical extension services to help identify opportunities for hazardous materials use reduction among hazardous materials user groups and handlers, which include an emphasis on providing information to the general public.

(F) Sponsoring pilot projects to develop and demonstrate innovative technologies for hazardous materials use reduction and making available results of these projects for use by the public.

(G) Providing hazardous materials use reduction training and assistance to government employees, citizens, community groups, workers, labor representatives, and local government boards and officials.

(H) Establishing, to the extent possible with hazardous materials users or user groups, including small quantity users, an intensive technology transfer, research, and technical assistance program

regarding the most hazardous materials.

(I) Studying the social, environmental, and economic costs and benefits of hazardous materials technologies as compared to hazardous materials use reduction practices.

(J) Establishing a competitive grants program for research on hazardous materials use reduction techniques and materials.

(K) Conducting research on alternative methods of reducing the use of hazardous materials, including the reduction of hazardous materials in product formulation so as to reduce household, as well as industrial, hazards.

(L) Providing information on hazardous materials use reduction for application to the preparation of use and source reduction plans, pursuant to the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5 of Division 20 of the Health and Safety Code).

(2) The report shall address the issues of the governance of the institute and the appropriate role and composition of a public advisory committee.

22547.2. The report specified in Section 25547.1 shall consider the availability of funding sources not currently available from the state, nonstate funding sources, and the establishment of fees, tuitions, or other financial charges as a means of funding the functions of the institute.

CHAPTER 892

An act to amend Sections 480.3, 480.4, and 480.5 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 480.3 of the Revenue and Taxation Code is amended to read:

480.3. (a) Each county assessor and recorder shall make available, without charge and upon request, a form entitled "Preliminary Change of Ownership Report," which transferees of real property may complete and file with the recorder concurrent with the recordation of any document effecting a change of ownership.

(b) If a document evidencing a change of ownership is presented to the recorder for recordation without the concurrent filing of a preliminary change of ownership report, the recorder may charge an additional recording fee of twenty dollars ($20). The additional fee shall not be charged if the document is accompanied by an affidavit

that the transferee is not a resident of California.

(c) Noncompliance with this section by the transferee shall not delay or preclude the recordation of documents if the additional fee specified in subdivision (b) is tendered.

(d) The authority to obtain information pursuant to this section is in addition to, and not in lieu of, any existing authority the assessor has under this article.

(e) In cases where the county tax collector files purchaser's deeds with respect to a sale for defaulted taxes, the information given to the assessor pursuant to Sections 3716 and 3811 shall be deemed to constitute compliance with this section.

(f) The filing of a preliminary change of ownership report or the payment of an additional recording fee shall not be required of any intermediate transferee of property. For purposes of this subdivision, "intermediate transferee" means any transferee who is acting as both a transferee and the transferor of the same property as part of a series of simultaneous transfers which affect that property and who records the transfer documents and any other recorded documents related to the transfer in consecutive order at one time.

(g) Except as prescribed in subdivisions (e) and (f), this section shall apply to changes of ownership occurring on or after July 1, 1985.

SEC. 2. Section 480.4 of the Revenue and Taxation Code is amended to read:

480.4. (a) The preliminary change of ownership report referred to in Section 480.3 shall be in substantially the following form:

PRELIMINARY CHANGE OF OWNERSHIP REPORT

(To be completed by transferee (buyer) prior to transfer of subject property in accordance with Section 480.3 of the Revenue & Taxation Code.)

FOR RECORDER: Recorded Book , Page , Date Document No.

SELLER:
BUYER:
A.P. #(s):
LEGAL DESCRIPTION:
ADDRESS (if improved):
MAIL TAX INFORMATION TO: Name:_____
Address:_____

FOR ASSESSOR'S USE ONLY

The property which you acquired may be subject to a supplemental tax assessment in an amount to be determined by the (name of county) County Assessor. For further information on your supplemental roll tax obligation, please call the (name of county) County Assessor at (phone number).

1. Transfer Information·

A. Was this transfer solely between husband & wife, addition of a spouse, death of a spouse, divorce settlement, etc.?	a. ( ) YES b. ( ) NO
B. Was this transaction only a correction of the name(s) of the person(s) holding title to the property?	a. ( ) YES b. ( ) NO
C. Was this document recorded to create, terminate, or reconvey a lender's interest in the property?	a. ( ) YES b. ( ) NO
D. Was this document recorded to substitute a trustee under a deed of trust, mortgage, or other similar document?	a. ( ) YES b. ( ) NO
E. Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants?	a. ( ) YES b. ( ) NO
F. Return of property to person who created the joint tenancy?	a. ( ) YES b. ( ) NO
G. Is this transfer of property:	
a. to a trust for the benefit of the grantor?	a. ( ) YES b. ( ) NO
b. to a revocable trust?	a. ( ) YES b. ( ) NO
c. to a trust from which the property reverts to the grantor within 12 years?	a. ( ) YES b. ( ) NO
H. If this property is the subject of a lease, is the lease for a term of less than 35 years including written options?	a. ( ) YES b. ( ) NO
I. If the conveying document constitutes an exclusion from a change in ownership as defined in Section 62 of the Revenue & Taxation Code for any reason other than those listed above, set forth the specific exclusion claimed: _____	

*IF YOU HAVE ANSWERED "NO" TO QUESTIONS A THROUGH H, INCLUSIVE, AND HAVE NOT CLAIMED ANY OTHER EXCLUSIONS UNDER 1, PLEASE COMPLETE BALANCE OF FORM. OTHERWISE SIGN AND DATE.

Preliminary Change of Ownership Report Page Two

2. Type of property transferred:
   a. ( ) Single-family residence
   b. ( ) Multiple-family residence (no. of units:____)
   c. ( ) Co-op
   d. ( ) Condo
   e. ( ) Mobilehome
   f. ( ) Unimproved lot
   g. ( ) Commercial/Industrial
   h. ( ) Other (description:_____)
3. Intended as principal residence? a. ( ) YES b. ( ) NO
4. Transfer is by:
   a. ( ) Deed: b. ( ) Contract of sale;
   c. ( ) Other—explain:_____
5. Is less than 100% of property being transferred? a. ( ) YES b. ( ) NO
6. a. ( ) Date of transfer or; b. ( ) If an inheritance, date of death_____
7. Is or will, the property produce(ing) income? a. ( ) YES b. ( ) NO
8. If answer to Question 4 is yes, is income pursuant to:
   a. ( ) Lease; b. ( ) Contract; c. ( ) Mineral rights; d. ( ) Other—explain:_____
9. Did the transfer of this property involve the trade or exchange of other real property? a. ( ) YES b. ( ) NO
10. a. Total Purchase Price or Acquisition Price, If Exchanged: $_____
    b. Cash Downpayment or Value of Trade (excluding closing costs): $_____
    c. 1st Deed of Trust $_____
    at_____ % interest for_____ years.
    New Loan ( ); Assumed Existing Loan Balance ( ); FHA ( ); Cal-Vet ( ); VA ( ); Bank ( ); Finance Co. ( ); Savings & Loan ( ); Loan Carried By Seller ( ); All Inclusive ( ); Balloon Payment: Yes ( ) No ( ).
    d. 2nd Deed of Trust $_____
    at_____ % interest for_____ years.
    New Loan ( ); Assumed Existng Loan Balance ( ); Loan Carried By Seller ( ); Balloon Payment: Yes ( ) No ( ).
    e. Was other type of financing involved not covered in (c) or (d), above? a. ( ) YES b. ( ) NO
    f. Improvement Bond: Yes ( ) No ( ); Outstanding Balance $_____
11. Was any personal property involved in purchase other than a mobilehome on real property? a. ( ) YES b. ( ) NO c. AMOUNT_____

Preliminary Change of Ownership Report Page Three

I certify that the foregoing is true, correct, and complete to the best of my knowledge and belief.

Signed _____ Date: _____
(New Owner/Corporate Officer)

Address if other than above _____

Phone No. Where You Are Available From 8:00 am–5:00 pm: ( ) _____

(NOTE: The Assessor may contact you for further information.)

(b) The State Board of Equalization may revise the preliminary change of ownership report, as necessary, for the purpose of maintaining statewide uniformity in the contents of the report.

SEC. 3. Section 480.5 of the Revenue and Taxation Code is amended to read:

480.5. (a) Every owner of tax-exempt real property shall report to the local assessor the creation, renewal, sublease, or assignment of any lease, sublease, license, use permit, or other document which conveys the right to use that real property within 60 days of the transaction. The report shall include all of the following:

(1) The name and address of the owner.

(2) The names and addresses of all other parties to the transaction, including an identification of each party and of his or her possessory interest.

(3) The type of transaction, whether creation, renewal, sublease, or assignment.

(4) A description of the property.

(5) The date of the transaction.

(6) The terms of the transaction, including all of the following:

(A) The consideration for the possessory interest, whether paid in money or otherwise.

(B) The term of the possessory interest, including any renewal or extension options.

(C) If a sublease, the original term, the remaining term, and the consideration paid for the master lease.

(D) If an assignment, the original term, the remaining term, and the consideration paid for the underlying lease.

(b) This section shall be applicable only in those counties in which the board of supervisors, by ordinance or resolution, specifically elects to have this section applicable in the county.

SEC. 4. It is the intent of the Legislature, in enacting Sections 1 and 2 of this act, to continue an additional aid to each assessor in expediting compliance with Section 75.10 of the Revenue and Taxation Code with respect to real property which changes ownership, thereby maintaining improved cash flows and increased revenues for local governments and providing the assessor with timely information which is needed to ascertain if a change of ownership of real property has occurred and, if so, to determine the full cash value of that property on the date of the change in ownership.

SEC. 5. 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 893

An act to amend Section 4370.5 of, and to add Section 4370.6 to, the Civil Code, relating to courts.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 4370.5 of the Civil Code is amended to read:

4370.5. (a) The court may make an award of attorneys' fees and costs under this chapter where the making of the award, and the amount of the award, is just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to adequately present his or her case, taking into consideration to the extent relevant the circumstances of the respective parties described in subdivision (a) of Section 4801. The fact that the party requesting an award of attorneys' fees and costs has the resources from which he or she could pay his or her own attorneys' fees and costs is not itself a bar to an order that the other party pay part, or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award from any type of property, whether community or separate, principal or income.

SEC. 2. Section 4370.6 is added to the Civil Code, to read:

4370.6. (a) Notwithstanding Sections 4370 and 4370.5, the court may base an award of attorneys' fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and abilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden upon the party against whom the sanction is imposed. In order to obtain an award under this section the party requesting an award of attorneys' fees and costs is not required to demonstrate any financial need for the award.

(b) An award of fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of fees and costs as a sanction pursuant to this section shall be payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.

CHAPTER 894

An act to add Section 8588.5 to the Government Code, relating to the Office of Emergency Services, and making an appropriation therefor.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The State of California has established its positive interest in minimizing the effects of disastrous events and calamities within the state.

(b) The Office of Emergency Services was created in the Governor's office to implement the Emergency Services Act, at Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(c) The Office of Emergency Services, pursuant to Chapter 8.5 (commencing with Section 3110) of Division 4 of Title 1 of the Government Code, registers certain civilian volunteers to assist in statewide disaster operations, providing the state a public safety capability not otherwise available.

(d) Among those so registered are a number of disaster search dog handlers, who, with their specially trained dogs, work to locate and rescue trapped persons during disaster operations, and whose value has been proven several times in the course of the past year.

(e) Currently, all expenses related to purchase of the dogs, training of the dogs, and purchase of needed safety equipment are borne by the volunteers, as are many of the costs related to ongoing professional training and travel to emergency sites.

(f) Currently, much of the training for search dogs and handlers is conducted privately, outside of state facilities, often at the expense of the volunteers.

(g) The state inventory of available, trained disaster search dog teams is limited, and does not generally include patrol dog teams from local law enforcement agencies.

SEC. 2. Section 8588.5 is added to the Government Code, to read:

8588.5. To promote an increase in the number of trained disaster search dog teams, the Office of Emergency Services shall do all of the following:

(a) Conduct a study to determine the feasibility and effectiveness

of cross-training existing law enforcement patrol dog teams or contraband detection dog teams, or both, to function also as disaster search dog teams. The office shall report its findings to the Legislature by January 31, 1991.

(b) Provide instruction to California disaster dog trainers in Swiss techniques.

(c) Work to secure authorization to conduct training for disaster search dog teams at existing facilities operated by the California National Guard and the Department of Transportation on the grounds of Camp San Luis Obispo.

(d) Engage in recruiting activities for the purpose of increasing the number of disaster search dog teams in southern California.

(e) Reimburse disaster search dog handlers and instructors for the costs of their travel and that of their dogs to training facilities within California.

SEC. 3. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Office of Emergency Services to carry out the purposes of this act.

Any additional funding for the purposes of this act shall be contingent upon the availability of funds in the annual Budget Act.

CHAPTER 895

An act to add Section 27152.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 27152.5 is added to the Vehicle Code, to read:

27152.5. (a) No 1993 or later model year bus, which operates on diesel fuel, designed for carrying 45 or more seated passengers, including the driver, may be operated on the highways unless the exhaust system on that bus discharges upward or toward the rear, above the passenger compartment, on the left side of the midpoint between the sides of the vehicle, and to the rear of all openable doors or windows except emergency exits.

(b) No bus, motor truck, or truck tractor which is operated on the highway, regardless of the year of manufacture, shall be equipped with an exhaust system which does not comply with the requirements of 49 C.F.R. 393.83.

(c) This section shall become operative on January 1, 1993.

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 896

An act to add Section 1002.5 to the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1002.5 is added to the Public Utilities Code, to read:

1002.5. In issuing a certificate of convenience and necessity for additional natural gas pipeline capacity proposed for construction within this state, the commission shall consider the state's need to provide sufficient and competitively priced natural gas supplies for both present and anticipated future residential, industrial, commercial, and utility demand. When it finds that it is in the state's best interests to do so, the commission shall expeditiously issue certificates of convenience and necessity for those additional natural gas pipeline capacity projects.

CHAPTER 897

An act to add and repeal Section 1448 of the Health and Safety Code, relating to county health care facilities.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 1448 is added to the Health and Safety Code, to read:

1448. (a) In any county in which the board, by a two-thirds vote, certifies that there is an urgent need to expeditiously construct or expand county health care facilities in order to retain federal or state licensing and certification or to meet fire, life safety, or other related regulatory standards, or both, the board may negotiate and enter into

contracts for the construction, alteration, or expansion of county health care facilities without the formality of obtaining bids, adopting plans and specifications, or complying with any other requirements of Article 3.5 (commencing with Section 20120) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, except as required by this section. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129 of the Public Contract Code, and a bond for the payment of claims for labor and materials. A contract awarded pursuant to this section shall be considered a public works project subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. Any plans and specifications adopted by the board shall only be altered or changed in accordance with Section 20135 of the Public Contract Code, and all contracts awarded pursuant to this section shall only be altered or changed in accordance with Sections 20136, 20137, and 20138 of the Public Contract Code. 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 shall be awarded only to a contractor who has responded to the request 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 responsible bid is selected. The competitive process shall include specific evaluation criteria. The competitive evaluation of contractors shall include, but need not be limited to, (1) demonstrated experience in the successful completion of projects of similar type and size, (2) the degree to which size of the firm and financial resources of the firm are adequate to ensure successful project completion, and (3) overall prior experience in successfully completing projects within schedule and budget.

Any county which enters into a contract pursuant to this section more than once in any fiscal year shall report to the Legislature. The report shall describe each project, the estimated cost of the project, the actual cost of the project, the estimated timeline to finish the project, the actual time to finish the project, and any benefits the county realized by entering into a contract pursuant to this section.

(b) "Health care facilities," for the purposes of this section, means county hospitals, outpatient clinics, skilled nursing facilities, intermediate care facilites, correctional treatment centers, and community care facilites.

(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.

CHAPTER 898

An act to add Section 68511.4 to the Government Code, relating to courts.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 68511.4 is added to the Government Code, to read:

68511.4. The Judicial Council shall undertake to study and report on recordkeeping practices in the trial courts. The study shall be conducted in consultation with an advisory committee of representatives from interested and affected groups including judges, court clerks, court administrators, court reporters, attorneys, historical and research groups, and others as identified by the Judicial Council. The study shall include, but not be limited to, the following areas: (a) the volume of trial court records now in existence, together with the methods of maintaining records, and the costs of record maintenance; (b) the rate at which records are accumulating; and (c) the use of records by the courts and by the public.

On or before July 1, 1992, the Judicial Council shall submit a report to the Legislature on uniform statewide record management policies and practices together with methods for application of new record reproduction, storage, and transmission technology to meet the needs for efficient court administration, for protection and preservation of records, for public access, and for historical and other research.

CHAPTER 899

An act to amend Section 35002 of, and to add Section 34500.2 to, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 34500.2 is added to the Vehicle Code, to read:

34500.2. No additional inspection shall be required under this division on any vehicle which is owned and operated by a public agency and is used for responding to and returning from an emergency, as defined in subdivision (c) of Section 35002, during the

duration of the emergency, as determined by the public agency, if an inspection pursuant to Section 1215 of Title 13 of the California Code of Regulations has been completed on the vehicle within the past 24 hours. Any vehicle used in responding to an emergency shall be inspected immediately upon the termination of the emergency.

SEC. 2. 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, 1992.

(b) All vehicles purchased on and after January 1, 1992, 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) A vehicle owned, operated, or rented by any public agency which is being used in responding to or returning from an emergency, may be operated as required, if a reasonable effort is first made by the agency to obtain verbal permission from an authorized officer or employee of the agency having jurisdiction of the highways

used, and, upon termination of the emergency, when the vehicle is returning from the site of the emergency, the public agency either obtains a permit at the location of the emergency or makes a reasonable effort to obtain verbal permission from an authorized officer or employee of the agency having jurisdiction of the highways used, and obtains a written permit for that use pursuant to Section 35780 not later than three days after the date 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. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify, at the earliest possible time, the exemption from requirements of existing law regarding weight limits with respect to fire trucks, it is necessary that this act take effect immediately.

CHAPTER 900

An act to amend Section 830.8 of the Penal Code, relating to peace officers.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 830.8 of the Penal Code, as amended by Section 12 of Chapter 82 of the Statutes of 1990, is amended to read:

830.8. (a) Federal criminal investigators and law enforcement officers are not California peace officers but may exercise the powers of arrest of a peace officer 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 and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of their federal duties. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

(c) National park rangers are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided these rangers are exercising the arrest powers incidental to the performance of their federal duties or providing or attempting to provide law enforcement services in response to a request initiated by California state park rangers to assist in preserving the peace and protecting state parks and other property for which California state park rangers are responsible. National park rangers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfactorily completed the training requirements of Section 832.3, or the equivalent thereof.

CHAPTER 901

An act to add Section 438 to the Military and Veterans Code, relating to the California National Guard.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

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

(a) The California National Guard makes significant contributions to the State of California and plays an invaluable role in preserving and protecting a high quality of life in the state.

(b) California National Guard members provide essential services to the state, helping to safeguard life, property, and peace during emergencies and times of special need.

(c) In order for the California National Guard to properly and efficiently perform its duties and responsibilities, it is essential for the Guard to acquire and retain necessary facilities throughout the state.

(d) California National Guard facilities contribute to the communities in which they are located by serving as emergency shelters for displaced residents, community centers for special events and ceremonies, in addition to training, staging, and storage areas for California National Guard members.

SEC. 2. Section 438 is added to the Military and Veterans Code, to read:

438. (a) The Adjutant General may appoint a Community Advisory Committee to advise the Adjutant General on matters involving the role and function of California National Guard members and facilities in communities around the state.

(b) If the advisory committee is appointed pursuant to subdivision (a), the Adjutant General shall determine the number of members to be appointed to the committee, which shall include representation from cities and counties and organizations or associations which represent the interests of homeless persons. The members of the committee shall serve without compensation.

(c) The committee may advise the Adjutant General on issues including, but not limited to, the use of the California National Guard armories as shelters for the homeless. It is not the function of the committee to advise the Adjutant General on matters pertaining to the California National Guard which do not directly impact local communities.

CHAPTER 902

An act to amend Section 69.5 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 12, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided

that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the

recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall

determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new

construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original

property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new

base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) This section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(k) The amendments to this section made by the act adding this subdivision shall become operative on the effective date of this act unless Assembly Constitutional Amendment No. 1 of the 1987–88 Regular Session is approved by the voters. In that event, the amendments shall not become operative until January 1, 1999.

SEC. 1.3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of

Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all

claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible

under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the

original property. In the case of a severely and permanently disabled claimant, proof shall be submitted. in the form of a certification, signed by a licensed physician and surgeon of appropriate specialty, verifying that the move to the replacement home is made necessary by the disability.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his

or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption"

includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and

indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision shall become operative on the effective date of this act unless Assembly Constitutional Amendment No. 1 of the 1987–88 Regular Session is approved by the voters. In that event, the amendments shall not become operative until January 1, 1999.

SEC. 1.5. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a

result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the

claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that

property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or

personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e),

without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75 10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section shall also apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) This section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(k) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 1.7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year

value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures

of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed

eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant, proof shall be submitted, in the form of a certification, signed by a licensed physician and surgeon of appropriate specialty, verifying that the move to the replacement home is made necessary by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the

date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest

described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal

entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this

section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 2. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this

state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of

subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the

land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor,

on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or

personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the

date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this

subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2.3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law,

pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's

exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them is eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years

of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant, proof shall be submitted, in the form of a certification, signed by a licensed physician and surgeon of appropriate specialty, verifying that the move to the replacement home is made necessary by the disability.

(3) The address and, if known, the assessor's parcel number of the original property and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract.

Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has or has not been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(14) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under

this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2.5. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property

is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the

property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the

claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them is eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the

original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and

within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling

is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an

amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2.7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is

situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the

mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant, proof shall be submitted, in the form of a certification, signed by a licensed physician and surgeon of appropriate specialty, verifying that the move to the replacement home is made necessary by the disability.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period

subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided

in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(14) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling

is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more that the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this

section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 3. (a) Sections 1.3 and 2.3 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by both this bill and AB 3843. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 69.5 of the Revenue and Taxation Code, (3) AB 2835 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3843, in which case Sections 1, 1.5, 1.7, 2, 2.5, and 2.7 of this bill shall not become operative.

(b) Sections 1.5 and 2.5 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by both this bill and AB 2835. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 69.5 of the Revenue and Taxation Code, (3) AB 3843 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2835 in which case Sections 1, 1.3, 1.7, 2, 2.3, and 2.7 of this bill shall not become operative.

(c) Sections 1.7 and 2.7 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by this bill, AB 2835, and AB 3843. They shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 69.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2835 and AB 3843, in which case Sections 1, 1.3, 1.5, 2, 2.3, and 2.5 of this bill shall not become operative.

SEC. 4. The amendments made by Sections 1.5, 1.7, 2.5, and 2.7 of this act to Section 69.5 of the Revenue and Taxation Code with respect to new construction performed upon a replacement

dwelling subsequent to the transfer of base-year value to that dwelling shall only apply with respect to a replacement dwelling which is purchased or newly constructed on or after January 1, 1991.

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 903

An act to amend Sections 23919, 45314, and 88033 of the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 23919 of the Education Code is amended to read:

23919. Any retirant may be employed by a school district or other employing agency and earn not more than fifteen thousand dollars ($15,000), in any one school year and the rate of pay for such employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties. The employment shall not operate to reinstate the retirant as a member of this system, or to terminate or suspend his or her retirement allowance, and no deduction shall be made from his or her salary as contributions to this system.

The maximum amount earnable under this section shall be adjusted by the board on July 1, 1991, and on each July 1, thereafter, by the annual amount of increase in All Urban California Consumer Price Index using December 1989 as the base.

SEC. 2. Section 45134 of the Education Code is amended to read:

45134. (a) Notwithstanding any other provisions of law, no minimum or maximum age limits shall be established for the employment or continuance in employment of persons as part of the classified service.

(b) Any person possessing all of the minimum qualifications for any employment shall be eligible for appointment to that employment, and no rule or policy, either written or unwritten, heretofore or hereafter adopted, shall prohibit the employment or continued employment, solely because of the age of any such person in any school employment who is otherwise qualified therefor.

(c) No person shall be employed in school employment while he or she is receiving a retirement allowance under any retirement system by reason of prior school employment, except that a person may be hired:

(1) Pursuant to Article 5 (commencing with Section 21150) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code.

(2) As an aide in one of the following circumstances:

(A) An aide is needed in a class with a high pupil-teacher ratio.

(B) An aide is needed to provide one-on-one instruction in remedial classes or for underprivileged students.

A person working as an aide pursuant to this subdivision shall not receive service credits for purposes of the State Teachers' Retirement System.

(d) The provisions of subdivision (c) shall be inapplicable to persons who were employed in the classified service of any school district as of September 18, 1959, and who are still in the employ of the same district on the effective date of this subdivision, and the rights of those persons shall be fixed and determined as of September 18, 1959, and no such person shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he or she would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefor, be reinstated to such rights as he or she would have had had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

SEC. 3. Section 88033 of the Education Code is amended to read:

88033. (a) Notwithstanding any other provisions of law, no minimum or maximum age limits shall be established for the employment or continuance in employment of persons as part of the classified service.

(b) Any person possessing all of the minimum qualifications for any employment shall be eligible for appointment to that employment, and no rule or policy, either written or unwritten, heretofore or hereafter adopted, shall prohibit the employment or continued employment, solely because of the age of any such person in any school employment who is otherwise qualified therefor.

(c) No person shall be employed in school employment while he or she is receiving a retirement allowance under any retirement system by reason of prior school employment, except as provided in Article 5 (commencing with Section 21150) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code.

(d) The provisions of subdivision (c) shall be inapplicable to persons who were employed in the classified service of any community college district as of September 18, 1959, and who are still in the employ of the same district on the effective date of this

subdivision, and the rights of such persons shall be fixed and determined as of September 18, 1959, and no such person shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefor, be reinstated to such rights as he or she would have had had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

CHAPTER 904

An act to add Section 199.79 to the Health and Safety Code, relating to AIDS.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

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

(a) While whites account for the greatest percentage of AIDS cases, recent data indicate a rapidly growing problem of the development of AIDS cases among racial and ethnic minority populations.

(b) Existing programs which provide services to persons with AIDS and ARC are based on the San Francisco model of community-based continuum of care services. While this model exemplifies a broad-based network of comprehensive services, the delivery of services is generally directed to a homogeneous population. The network is overburdened and proving to be deficient in addressing the needs of racial and ethnic minority populations, women, and women with children.

(c) Blacks account for 7.7 percent of the state's population, while constituting 11 percent of cumulative AIDS cases. In 1988, Blacks accounted for the highest proportion of new AIDS cases.

(d) Hispanics account for 19.2 percent of the state's population and 12 percent of AIDS cases. Asians account for 5.7 percent of the state population and 1 percent of AIDS cases.

(e) The lack of adequate housing is the single greatest nonmedical gap in care for persons with AIDS or ARC.

(f) Residential care facilities are at capacity with extensive waiting lists. Further, the demand for home care services is running ahead of projections for persons with AIDS or ARC.

(g) Some health insurers pay for health and respite care provided in facilities which are not hospitals.

(h) Low reimbursement rates discourage the building and maintenance of subacute care facilities which creates an undersupply of these facilities.

(i) Persons who are infected with HIV, because of their rapidly fluctuating medical conditions, do not always fit into the available modes of medical and housing services which are structured for people with more stable conditions.

SEC. 2. Section 199.79 is added to the Health and Safety Code, to read:

199.79. (a) The state department, in consultation with the State Department of Alcohol and Drug Programs, shall review existing programs administered by the state department, the State Department of Alcohol and Drug Programs, or both which provide services to persons with AIDS or ARC or persons at risk of becoming infected with HIV to identify whether there are unmet needs in targeting these programs to substance abusers, racial and ethnic minority populations, and women. In reviewing the existing programs, the state department shall consider the provision of care by the existing programs outside of a general acute care hospital setting to substance abusers, racial and ethnic minority populations, and women by taking into account the current availability of beds outside of a hospital setting, the availability of those beds to substance abusers, racial and ethnic minority populations, and women, and the projected need for additional beds outside of a hospital setting for substance abusers, racial and ethnic minority populations, and women.

(b) The state department shall take into account the unmet needs of substance abusers, racial and ethnic minority populations, and women as identified pursuant to subdivision (a) in its planning and development of programs which provide services to persons with AIDS and ARC.

(c) The state department shall report its findings pursuant to this section on or before April 1, 1991. The report shall include, but not be limited to, recommendations suggesting programmatic changes deemed appropriate by the state department that would better meet the needs of substance abusers, racial and ethnic minority populations, and women with, or at risk of becoming infected with, HIV, and the fiscal considerations for implementing the recommendations.

CHAPTER 905

An act to add Section 4850.7 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 4850.7 is added to the Labor Code, to read:

4850.7. (a) Any firefighter employed by a dependent or independent fire district may be entitled to the benefits of this article, if otherwise entitled to these benefits, even though the employee is not a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(b) The issue of whether the firefighters employed by a fire district are entitled to the benefits of this article is subject to Article 10 (commencing with Section 3500) of Chapter 3 of Division 4 of Title 1 of the Government Code.

(c) If the governing body of the district agrees that the benefits shall apply, it shall adopt a resolution to that effect.

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 906

An act to amend Sections 69598, 73772, and 73773 of the Government Code, relating to courts.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 69598 of the Government Code is amended

to read:

69598. In the County of San Joaquin there are 13 judges of the superior court.

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

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

Any change in the salaries in effect immediately prior to January 1, 1990, shall be on an interim basis and shall expire on January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

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

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

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

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

(b) Any change in the salaries in effect immediately prior to January 1, 1990, shall be on an interim basis and shall expire on January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

SEC. 4. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. 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 907

An act to add Section 20121.1 to the Public Contract Code, relating to public construction.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 20121.1 is added to the Public Contract Code, to read:

20121.1. Notwithstanding Section 20121, a county board of supervisors need not contract for grading, drainage, pipe laying, fencing, landscaping, instrument installation, and similar construction and repair work necessary to maintain day-to-day landfill operations.

CHAPTER 908

An act to amend Sections 6258 and 6259 of the Government Code, relating to public records.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 6258 of the Government Code is amended to read:

6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

SEC. 2. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 10 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

CHAPTER 909

An act to amend Section 33447 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 33447 of the Health and Safety Code is amended to read:

33447. In addition to any other authority contained in this division and subject to the requirements of this section, taxes levied in a project area and allocated to the agency as provided in subdivision (b) of Section 33670 may be used as provided thereby anywhere within the territorial jurisdiction of the agency to finance the construction or acquisition of public improvements meeting the following criteria, as determined by resolution of the agency:

(a) The public improvements will enhance the environment of a residential neighborhood containing housing for persons and families of low or moderate income, as defined in Section 50093, including very low income households, as defined in Section 50105.

(b) The public improvements will be of benefit to the project area. That determination shall be final and conclusive as to the issue of benefit to the project area.

(c) Public improvements eligible for financing under this section shall be limited to the following:

(1) Street improvements.

(2) Water, sewer, and storm drainage facilities.

(3) Neighborhood parks and related recreational facilities.

This section shall be applicable to redevelopment projects within the City of Paramount for which the redevelopment plan authorizes tax-increment financing pursuant to Section 33670, whether the redevelopment plan is adopted prior or subsequent to January 1, 1978. Financing of public improvements pursuant to this section shall be authorized by the redevelopment plan or by resolution of the agency. Any ordinance or resolution implementing this section shall specify the public improvements to be financed thereunder.

As a condition to financing public improvements as provided in this section on or after January 1, 1983, the redevelopment agency of the City of Paramount shall establish a Low and Moderate Income Housing Fund, and, with respect to any project made subject to this section, shall deposit in that fund not less than 20 percent of that portion of revenues allocated and paid to the agency pursuant to subdivision (b) of Section 33670 on and after January 1, 1983, which is not required to pay the principal of, or interest on, bonds or other indebtedness of the agency issued or incurred prior to that date. Moneys deposited in the Low and Moderate Income Housing Fund

pursuant to this section shall be used pursuant to Article 4 (commencing with Section 33330).

The Legislature finds and declares that effective redevelopment within the City of Paramount requires the existence of adequate public services and facilities for persons residing in the surrounding community, including persons employed by industry which is located in a redevelopment project, and that public improvements of the types specified in this section are particularly needed in the low- and moderate-income neighborhoods of the City of Paramount in order to encourage stability and prevent decline which could have serious negative impact on redevelopment, as well as necessitate additional redevelopment. Because of the unusually compelling need in the City of Paramount and because of the impracticability of financing all required improvements by other means, it is the intent of the Legislature in enacting this section to augment the powers of the redevelopment agency of the City of Paramount to permit the use of tax-increment revenues in the manner and for the purposes prescribed by this section.

CHAPTER 910

An act to amend Section 170.3 of the Code of Civil Procedure, relating to judges.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 170.3 of the Code of Civil Procedure is amended to read:

170.3. (a) (1) Whenever a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal and shall not further participate in the proceeding, except as provided in Section 170.4, unless his or her disqualification is waived by the parties as provided in subdivision (b).

(2) If the judge disqualifying himself or herself is the only judge or the presiding judge of the court, the notification shall be sent to the person having authority to assign another judge to replace the disqualified judge.

(b) (1) A judge who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification, except where the basis for disqualification is as provided in paragraph (2). A waiver of disqualification shall recite the basis for the disqualification, and is effective only when signed by all parties and their attorneys and filed

in the record.

(2) There shall be no waiver of disqualification where the basis therefor is either of the following:

(A) The judge has a personal bias or prejudice concerning a party.

(B) The judge served as an attorney in the matter in controversy, or the judge has been a material witness concerning it.

(3) The judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver of disqualification.

(4) In the event that grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification be waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge.

(c) (1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

(5) No judge who refuses to recuse himself or herself shall pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party.

In every such case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge pursuant to subdivision (c) of Section 170.3 or Section 170.6 may be made against the judge selected to decide the question of disqualification.

(6) The judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and answer and such written arguments as the judge requests, or the judge may set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge shall permit the parties and the judge alleged to be disqualified to argue the question of disqualification and shall for good cause shown hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge as provided in subdivision (a) of Section 170.3.

(d) The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought within 10 days of notice to the parties of the decision and only by the parties to the proceeding.

CHAPTER 911

An act to amend Section 56.10 of the Civil Code, and to amend Section 410 of the Health and Safety Code, relating to disclosures of health information.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care shall disclose medical information regarding a patient of the provider without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes

of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) When otherwise specifically required by law.

(c) A provider of health care may disclose medical information as follows:

(1) The information may be disclosed to providers of health care or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. The information may also be disclosed to another provider as necessary to assist the other provider in obtaining payment for health care services rendered by that provider to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way which would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, or to licensed health care service plans, or to professional standards review organizations, or to utilization and quality control peer review organizations as established by Congress in Public Law

97-248 in 1982, or to persons or organizations insuring, responsible for, or defending professional liability which a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way which would permit identification of the patient.

(8) A provider of health care that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information which:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided it may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy which the patient seeks coverage by or benefits from, if the information was created by the provider of health care as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a group practice prepayment health care service plan by providers which contract with the plan and may be transferred among providers which contract with the plan, for the purpose of administering the plan.

Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent.

(13) When the disclosure is otherwise specifically authorized by law.

SEC. 2. Section 410 of the Health and Safety Code is amended to read:

410. (a) Every physician and surgeon shall report immediately to the local health officer in writing, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a case of a disorder characterized by lapses of consciousness. However, if a physician and surgeon reasonably and in good faith believes that the reporting of a patient will serve the public interest, he or she may report a patient's condition even if it may not be required under the state department's definition of disorders characterized by lapses of consciousness pursuant to subdivision (d).

(b) The local health officer shall report in writing to the Department of Motor Vehicles the name, age, and address, of every person reported to it as a case of a disorder characterized by lapses of consciousness.

(c) These reports shall be for the information of the Department of Motor Vehicles in enforcing the Vehicle Code, and shall be kept confidential and used solely for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this state.

(d) The state department, in cooperation with the Department of Motor Vehicles, shall define disorders characterized by lapses of consciousness based upon existing clinical standards for that definition for purposes of this section and shall include Alzheimer's disease and those related disorders which are severe enough to be likely to impair a person's ability to operate a motor vehicle in the definition. The state department, in cooperation with the Department of Motor Vehicles, shall list those circumstances which shall not require reporting pursuant to subdivision (a) because the patient is unable to ever operate a motor vehicle or is otherwise unlikely to represent a danger which requires reporting. The state

department shall consult with professional medical organizations whose members have specific expertise in the diagnosis and treatment of those disorders in the development of the definition of what constitutes a disorder characterized by lapses of consciousness as well as definitions of functional severity to guide reporting so that diagnosed cases reported pursuant to this section are only those where there is reason to believe that the patients' conditions are likely to impair their ability to operate a motor vehicle. The state department shall complete the definition on or before January 1, 1992.

(e) The Department of Motor Vehicles shall, in consultation with the professional medical organizations specified in subdivision (d), develop guidelines designed to enhance the monitoring of patients affected with disorders specified in this section in order to assist with the patients' compliance with restrictions imposed by the Department of Motor Vehicles on the patients' licenses to operate a motor vehicle. The guidelines shall be completed on or before January 1, 1992.

(f) A physician and surgeon who reports a patient diagnosed as a case of a disorder characterized by lapses of consciousness pursuant to this section shall not be civilly or criminally liable to any patient for making any report required or authorized by this section.

CHAPTER 912

An act to amend Section 1861.03 of the Insurance Code, relating to insurance.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 1861.03 of the Insurance Code is amended to read:

1861.03. (a) The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Civil Code Sections 51 through 53), and the antitrust and unfair business practices laws (Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) of Division 7 of the Business and Professions Code).

(b) Nothing in this section shall be construed to prohibit (1) any agreement to collect, compile and disseminate historical data on paid claims or reserves for reported claims, provided such data is contemporaneously transmitted to the commissioner, or (2) participation in any joint arrangement established by statute or the commissioner to assure availability of insurance.

(c) (1) Notwithstanding any other provision of law, a notice of

cancellation or nonrenewal of a policy for automobile insurance, as described in subdivision (a) of Section 660, shall be effective only if it is based on one or more of the following reasons: (A) nonpayment of premium; (B) fraud or material misrepresentation affecting the policy or insured; (C) a substantial increase in the hazard insured against.

(2) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from issuing an effective notice of nonrenewal based solely on the failure of the insured to maintain membership in the motor club. This subdivision shall also not prevent an insurer which issues private passenger automobile coverage to members of groups that were in existence prior to November 8, 1988, whether membership, franchise, or otherwise, and to those who are not members of groups from issuing an effective notice of nonrenewal for coverage provided to the insured as a member of the group based solely on the failure of the insured to maintain that membership if (i) the insurer offers to renew the coverage to the insured on a nongroup basis, or (ii) to transfer the coverage to an affiliated insurer. The rates charged by the insurer or affiliated insurer shall have been adopted pursuant to this article. However, all of the following conditions shall be applicable to that insurance:

(A) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(B) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(C) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates subparagraphs (A), (B), or (C) shall be subject to the penalties set forth in Section 1861.14.

CHAPTER 913

An act to amend Section 98.6 of the Revenue and Taxation Code, relating to property tax revenues.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall

be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing

body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

(n) Notwithstanding any other provision to the contrary, the governing body of Marin County shall not allocate pursuant to this section to any special district, other than a special district governed by the county board of supervisors or whose governing board is the same as the county board of supervisors, an amount which is less than the amount of the reduction determined for that district pursuant to subdivision (a). However, if an allocation shall cause a special district to exceed its appropriations limit established pursuant to Section 7910 of the Government Code, the governing body shall reduce that allocation in an amount equal to the amount which is in excess of that district's appropriations limit.

SEC. 1.3. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Sections 98.66 and 98.67, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of

supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds

requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be

allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

(n) Notwithstanding any other provision to the contrary, the governing body of Marin County shall not allocate pursuant to this section to any special district, other than a special district governed by the county board of supervisors or whose governing board is the same as the county board of supervisors, an amount which is less than the amount of the reduction determined for that district pursuant to subdivision (a). However, if an allocation shall cause a special district to exceed its appropriations limit established pursuant to Section 7910 of the Government Code, the governing body shall reduce that allocation in an amount equal to the amount which is in excess of that district's appropriations limit.

SEC. 1.5. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Section 98.65, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county

board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

(n) Notwithstanding any other provision to the contrary, the governing body of Marin County shall not allocate pursuant to this section to any special district, other than a special district governed by the county board of supervisors or whose governing board is the

same as the county board of supervisors, an amount which is less than the amount of the reduction determined for that district pursuant to subdivision (a). However, if an allocation shall cause a special district to exceed its appropriations limit established pursuant to Section 7910 of the Government Code, the governing body shall reduce that allocation in an amount equal to the amount which is in excess of that district's appropriations limit.

SEC. 1.7. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Sections 98.65, 98.66, and 98.67, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of

this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any

special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to

exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

(n) Notwithstanding any other provision to the contrary, the governing body of Marin County shall not allocate pursuant to this section to any special district, other than a special district governed by the county board of supervisors or whose governing board is the same as the county board of supervisors, an amount which is less than the amount of the reduction determined for that district pursuant to subdivision (a). However, if an allocation shall cause a special district to exceed its appropriations limit established pursuant to Section 7910 of the Government Code, the governing body shall reduce that allocation in an amount equal to the amount which is in excess of that district's appropriations limit.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances in Marin County. The Legislature finds, therefore, that this special act is necessary. The facts constituting the necessity are:

In Marin County, the particular needs of special districts have led to the development of a specific plan of allocation from the Special District Allocation Fund. Because this plan of allocation may be subject to change regardless of the continuing special needs of

certain special districts in Marin County, this act is needed to provide year-to-year stability in allocations to those districts.

SEC. 3. (a) Section 1.3 of this bill incorporates amendments to Section 98.6 of the Revenue and Taxation Code proposed by both this bill and SB 2255. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 98.6 of the Revenue and Taxation Code, (3) AB 4215 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2255, in which case Sections 1.5 and 1.7 of this bill shall not become operative, and Section 98.6 of the Revenue and Taxation Code, as amended by Section 1 of SB 2255, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 98.6 of the Revenue and Taxation Code proposed by both this bill and AB 4215. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 98.6 of the Revenue and Taxation Code, (3) SB 2255 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4215 in which case Sections 1.3 and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 98.6 of the Revenue and Taxation Code proposed by this bill, SB 2255, and AB 4215. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 98.6 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 2255 and AB 4215, in which case Sections 1.3 and 1.5 of this bill shall not become operative, and Section 98.6 of the Revenue and Taxation Code, as amended by Section 1 of SB 2255, shall remain operative only until January 1, 1991, at which time Section 1.7 of this bill shall become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. 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 914

An act to add Section 31682 to the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Section 31682 is added to the Government Code, to read:

31682. The board of retirement of a county of the 13th class, as defined by Sections 28020 and 28034, as amended by Chapter 1204 of the Statutes of 1971, may elect to provide, by resolution, a vested supplemental retirement benefit of one hundred eight dollars and forty-four cents ($108.44) per month to all current and future retired members and their survivors eligible for an optional settlement or a survivors allowance under this chapter.

Prior to the adoption of a resolution by the board of retirement to provide the supplemental retirement benefit provided for in this section, the cost of funding this supplemental retirement benefit into perpetuity shall be determined by a qualified actuary.

This section shall not be operative until such time as the board of supervisors shall, by majority vote, adopt a resolution making the provisions of this section applicable.

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 915

An act to add and repeal Section 11776.5 of the Health and Safety Code, relating to multiply diagnosed persons.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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

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

(a) Because of the concern over audit exceptions, the categorical nature of funding for mental health and drug and alcohol treatment and recovery programs is a barrier to the provision of services to persons who are multiply diagnosed.

(1) Auditors tend to look at the nature of the diagnosis and not at the type of service that is provided under categorically funded programs.

(2) Auditors tend to follow strict guidelines and to engage in rigid rule interpretation.

(b) No consistent, clear definition exists of a "system of care" applicable to the provision of services to persons who are multiply diagnosed, for services meeting the needs of these persons have yet to be defined.

(c) Because persons who are multiply diagnosed usually receive treatment and care from both the mental health and the drug and alcohol services delivery systems, a common treatment philosophy must be established and shared by these overlapping systems.

(d) Treatment options currently are limited for persons who are multiply diagnosed.

(e) To enable the effective delivery of services and to expand the available treatment options for persons who are multiply diagnosed, the funding and administrative barriers to the provision of services to this population must be eliminated.

SEC. 2. Section 11776.5 is added to the Health and Safety Code, to read:

11776.5. (a) The department and the State Department of Mental Health shall enter into a three-year agreement to establish a minimum of five demonstration programs, to commence on July 1, 1991, approved by both departments, that address the unique treatment problems presented by persons who are mentally disordered and have alcohol and drug problems. The total number of programs in addition to the minimum of five programs required by this section, shall be determined by the mutual agreement of both departments and be based upon an assessment by each department of its ability to effectively establish, operate, and maintain the administrative processes required to achieve the purposes of this section. To the extent possible, these programs shall be distributed

among large, medium, and small counties and located in northern, central, and southern California.

(1) Each county with a demonstration program shall submit a budget for providing services. The budget shall identify by source and amount, including government funds, fees, contributions, grants, and other revenues, the money available to the demonstration program for the provision of services. The budget shall also provide a projection of expenditures necessary for the delivery of services. The budget shall list all the personnel costs, operating costs, and any other costs in sufficient detail for both departments to review the budget.

(2) In addition, each county with a demonstration program shall submit a proposed cost allocation plan describing the methodology for allocating costs among the three treatment categories of alcohol services, drug program services, and mental health services. The cost allocation plan and budget shall be approved by both departments prior to reimbursement of expenses by either department. No county or provider participating in a demonstration program shall be subject to any audit disallowance by the department or the State Department of Mental Health that results from the multiple diagnosis status of the program's clients. If a demonstration program complies with the approved cost allocation plan, the program shall be exempt from cost report control to the combined total allocation from both departments, from audit liability resulting from controls to budgeted services and mental health services, and shall also be exempt from audit liability resulting from the disallowed reimbursement received from categorical sources among alcohol services, drug program services, and mental health services when the costs are disallowed solely because of the multiple diagnosis of the clients served.

(3) The approved cost allocation plan and budget shall establish the basis for reimbursement to each demonstration program by each department in the first year of operation. Each county with a demonstration program shall submit a cost report at the end of the fiscal year in the same format as the budget format. The cost report shall be reviewed along with the required budget for each succeeding year by the departments to establish the basis for reimbursement in the succeeding two years. The cost report shall be audited and shall be subject to audit exceptions in accordance with applicable state and federal law relating to the reimbursements from those categorical sources. The cost allocation plan and required budget for the two succeeding years shall require prior approval by both departments before reimbursement of expenses by either department.

(4) Both departments shall agree on the reporting requirements, methods of interim payments, and time frames required for submission of reports.

(5) It is the intent of the Legislature that the departments not limit their consideration of prospective applicants to only those

providers that propose to establish new programs pursuant to this section, but shall also consider applications of providers that have been serving persons with multiple diagnosis prior to January 1, 1991.

(b) Each demonstration program shall submit, at the end of each fiscal year, a progress report in a format approved by the department and the State Department of Mental Health. This report shall include, but not be limited to, the following information:

(1) The number of multiply diagnosed clients served.

(2) Identification of the problems presented by the multiply diagnosed clients served.

(3) The types of services provided.

(4) The costs of services provided.

(5) The length of services provided.

(c) The department and the State Department of Mental Health shall deem a demonstration program to be successful if all of the following conditions are met:

(1) The demonstration program showed reasonable evidence that auditing guidelines and the cost allocation plans provided appropriate financial accountability.

(2) The demonstration program resulted in enhanced collaboration and cooperation at the county planning level between the mental health and drug and alcohol service delivery systems and at the state level between the department and the State Department of Mental Health.

(3) The demonstration program enabled the delivery of appropriate services to multiply diagnosed persons.

(4) The demonstration program expanded available treatment options for multiply diagnosed persons.

(5) The audit guidelines permitted the development of operable and practical cost allocation plans. The department and the State Department of Mental Health are encouraged to refine audit guidelines as necessary during the implementation of the demonstration programs.

(d) Prior to January 1, 1995, the department and the State Department of Mental Health shall submit to the Legislature an evaluation report on the demonstration programs with recommendations for statewide implementation.

(e) This section shall remain in effect only until July 1, 1994, 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. 3. In authorizing the demonstration programs set forth in Section 2 of this act, the Legislature intends that the State Department of Alcohol and Drug Programs and the State Department of Mental Health use only existing fiscal resources. Therefore, no new funds shall be appropriated to establish and operate the demonstration programs specified in Section 11776.5 of the Health and Safety Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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 916

An act to amend Section 2191 of the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 2191 of the Business and Professions Code is amended to read:

2191. (a) In determining its continuing education requirements, the Division of Licensing shall consider including a course in human sexuality as defined in Section 2090 and nutrition to be taken by those licensees whose practices may require knowledge in such areas.

(b) The division shall consider including a course in child abuse detection and treatment to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(c) The division shall consider including a course in acupuncture to be taken by those licensees whose practices may require knowledge in the area of acupuncture and whose education has not included instruction in acupuncture.

(d) The division shall encourage every physician and surgeon to take nutrition as part of his or her continuing education, particularly a physician and surgeon involved in primary care.

(e) The division shall consider including a course in elder abuse detection and treatment to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected persons 65 years of age and older.

(f) In determining its continuing education requirements, the division shall consider including a course in the early detection and treatment of substance abusing pregnant women to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these women.

(g) In determining its continuing education requirements, the

division shall consider including a course in the special care needs of drug addicted infants to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these infants.

CHAPTER 917

An act to add Section 11868.5 to the Health and Safety Code, relating to drug exposed infants.

[Approved by Governor September 13, 1990. Filed with Secretary of State September 14, 1990.]

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 estimated that one million women of child-bearing age in California are substance abusers.

(b) In 1989 there were approximately 550,000 live births in California.

(c) Approximately 69,000 of the babies born in 1989 in California are substance-exposed infants.

(d) Studies at the University of California, Davis Medical Center in Sacramento indicate that 22 percent of the babies born at that hospital are tox positive, a test result which indicates the exposure to substances.

(e) Studies at King-Drew Hospital in Los Angeles indicate that 68 percent of babies born at that hospital are tox positive.

(f) Many drug-exposed infants are characterized by irritability, feeding and sleep difficulties, impaired sensory responsiveness, motor problems, and other behavioral problems which require special attention.

(g) Women are released from hospitals within hours after giving birth, and as a result the post partum woman is not able to assimilate the special education that she needs in the care needs of her baby prior to her release from the hospital.

SEC. 2. Section 11868.5 is added to the Health and Safety Code, to read:

11868.5. (a) The State Department of Alcohol and Drug Programs, in consultation with the State Department of Health Services, shall use existing materials to distribute a brochure on the care and treatment of infants under the age of six months who have been exposed to drugs. The brochure shall include, but not be limited to, the following:

(1) The signs and symptoms of an infant who has been exposed to drugs.

(2) The health problems of infants who have been exposed to drugs.

(3) The special feeding needs of infants who have been exposed to drugs.

(4) The special care needs of infants who have been exposed to drugs, such as not overstimulating those infants who are addicted to cocaine.

(b) The brochure developed pursuant to subdivision (a) may be distributed through hospitals, public health nurses, child protective services, alcohol and drug facilities, educational networks, foster parent groups, medical professional offices, Medi-Cal programs, and county interagency task force groups, as well as any other agency that the State Department of Alcohol and Drug Programs selects.

SEC. 3. It is the intent of the Legislature that the State Department of Alcohol and Drug Programs use the federal Alcohol, Drug Abuse, and Mental Health Services Block Grant for the purposes of this act.

CHAPTER 918

An act to amend Sections 708, 25301, and 25305 of, and to repeal Section 707 of, the Elections Code, relating to elections.

[Approved by Governor September 13, 1990 Filed with Secretary of State September 14, 1990]

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

SECTION 1. Section 707 of the Elections Code is repealed.

SEC. 2. Section 708 of the Elections Code is amended to read:

708. The county clerk, on the basis of the records of courts in the county having jurisdiction of such offenses, shall furnish to the chief elections official of the county, not less frequently than the first day of April and the first day of September of each year, a statement showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the county clerk's last report, and who are currently imprisoned. The elections official shall, during the first week of April and the first week of September in each year, cancel the affidavits of registration of such persons who are currently imprisoned or on parole for the conviction of a felony. The county clerk shall certify the statement under the seal of his or her office.

As used in this section, "county clerk" does not include "registrar of voters."

SEC. 3. Section 25301 of the Elections Code is amended to read:

25301. (a) Except in the case of a judicial office filled in accordance with subdivision (d) of Section 16 of Article VI of the Constitution, every candidate for a judicial office, not more than 14 nor less than five days prior to the first day on which his or her nomination papers may be circulated and signed or may be presented for filing, shall file in the office of the county elections

official in which his or her nomination papers are required to be filed or left for examination, a written and signed declaration in duplicate of his or her intention to become a candidate for that office on a form to be supplied by the county elections officials. A candidate for a numerically designated judicial office shall state in his or her declaration for which office he or she intends to become a candidate. A copy of each declaration of intention filed in accordance with this article, except those for municipal and justice court offices, shall be immediately forwarded by the county elections official to the Secretary of State. This section shall apply to all judicial offices whether numerically designated or not.

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for judicial office unless he or she has filed the declaration of intention provided for in this section. If the incumbent of a judicial office fails to file a declaration of intention by the end of the period specified in subdivision (a), persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers.

SEC. 4. Section 25305 of the Elections Code is amended to read:

25305. (a) If an incumbent of a judicial office dies on or before the last day prescribed for the filing of nomination papers, or files a declaration of intention but for any reason fails to file his or her nomination papers by the last day prescribed for the filing of the papers, an additional five days shall be allowed for the filing of nomination papers for the office.

(b) Any person, other than the person who was the incumbent, if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in Sections 25301 and 25302.

SEC. 5. 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 919

An act to amend Sections 12879.4 and 13867 of, and to add Division 8 (commencing with Section 15000) to, the Water Code, relating to financing a water resources program by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Division 8 (commencing with Section 15000) is added to the Water Code, to read:

DIVISION 8. WATER RESOURCES BOND ACT OF 1990

CHAPTER 1. GENERAL PROVISIONS

15000. This division shall be known and may be cited as the Water Resources Bond Act of 1990.

15001. As used in this chapter, the following terms have the following meanings:

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

(b) "Committee" means the Water Resources Finance Committee created pursuant to Section 15253.

(c) "Department" means the Department of Water Resources.

(d) "Fund" means the Water Resources Bond Fund created pursuant to Section 15250.

CHAPTER 2. CALIFORNIA WATER PROJECTS ASSISTANCE

Article 1. General Provisions

15050. This chapter shall be known and may be cited as the California Water Projects Assistance Act.

15051. (a) The object of this chapter is to provide funds to assist in the development, control, and conservation of the water resources of this state, and therefore to provide financial assistance to public agencies for the construction of water storage facilities to meet local requirements. It is also the object of this chapter to provide funds to public agencies that would not otherwise be able to finance water storage facilities without the assistance made available under this chapter.

(b) In the administration of this chapter, the department shall give preference to projects involving the development of new basic

water supplies to remedy existing water supply problems, including a lack of adequate water supply or future water supply based upon demand projections due to population growth. The department may also give preference to projects involving the repair, alteration, or replacement of dam and reservoir facilities which are subject to storage restrictions for dam safety purposes pursuant to Part 1 (commencing with Section 6000) of Division 3.

(c) The department, with the approval of the California Water Commission, shall establish priorities for funding projects on the basis of their economic, social, and environmental impacts. In establishing priorities, particular emphasis shall be given to remedying existing water supply problems, the public necessity for the project, the urgency of the need, the engineering feasibility, and the economic need for the project The recreation and fish and wildlife enhancement functions, as well as the water storage functions, of the proposed project shall be considered. The availability of additional sources of funding shall be considered in determining the feasibility of the project. Secondary purposes of flood control and power production may be taken into consideration in the economic justification of a proposed project. Factors such as the public health, safety, and welfare shall be taken into consideration in determining the need for a proposed project.

(d) The enactment of this chapter shall not be construed as creating any right to water or the use thereof, nor as affecting any existing law with respect to water or water rights, except as expressly provided in this chapter, nor shall anything in this chapter affect or be construed as affecting vested water rights.

(e) No facility constructed, in whole or in part, with funds made available by this chapter shall be used to transport water, the right to which was secured through eminent domain by others than the state, unless approved by a statute enacted by the Legislature.

15052. As used in this chapter, the following terms have the following meanings:

(a) "Account" means the California Water Projects Assistance Account created pursuant to Section 15060.

(b) "Feasibility study" means any engineering, environmental, or financial study designed to determine the feasibility of a proposed project.

(c) "Project" means any dam, reservoir, or other construction or improvement, including land acquisition, by a public agency for the diversion, storage, or primary distribution of water, or facilities for groundwater extraction, primarily for domestic, municipal, agricultural, industrial, recreational, and fish and wildlife enhancement purposes. A project may include flood control or power production as secondary purposes, but costs allocable to those purposes shall not be funded under this chapter.

(d) "Public agency" means any city, county, city and county, district, or joint powers authority. "Public agency" does not include any private person, partnership, corporation, or other private entity,

whether for profit or organized as a nonprofit entity.

Article 2. California Water Project Assistance Program

15060. (a) There is hereby created in the fund the California Water Projects Assistance Account for the purpose of implementing this chapter. The sum of twenty-five million dollars ($25,000,000) is hereby transferred from the fund to the account.

(b) There is in the account the Water Projects Assistance Subaccount. The sum of twenty-three million dollars ($23,000,000) is hereby transferred from the account to the Water Projects Assistance Subaccount and is, notwithstanding Section 13340 of the Government Code, appropriated without regard to fiscal years to the department for purposes of implementing Sections 15064 and 15065.

(c) There is in the account the Mitigation and Enhancement Subaccount. The sum of two million dollars ($2,000,000) is hereby transferred from the account to the Mitigation and Enhancement Subaccount and is, notwithstanding Section 13340 of the Government Code, appropriated without regard to fiscal years to the department for purposes of implementing Section 15067.

(d) The department may create additional subaccounts in the account as it determines necessary or appropriate for proper administration.

15061. (a) The department may make loans to public agencies, upon approval of the Legislature by statute, to aid in the acquisition of land and the construction of projects, and to mitigate the environmental impacts of projects and enhance fish and wildlife resources.

(b) Notwithstanding any other provision of law, the proceeds of any bonds authorized to be issued under the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6) and deposited in the Local Water Projects Assistance Account under Section 12879.5, which are unobligated upon voter approval of this division, may be used for loans to public agencies in accordance with the terms, conditions, and purposes of this chapter.

(c) The department may adopt rules and regulations necessary to carry out the purposes of this chapter. Notwithstanding any other provision of law, existing rules and regulations adopted by the department pursuant to Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 that are in effect on November 7, 1990, may be utilized to carry out this chapter. The department may subsequently amend those 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 as necessary to carry out this chapter.

15062. (a) For the purposes of administering this chapter, the total expenditures of the department may not exceed 5 percent of the total amount of the bonds authorized to be issued for purposes of this chapter. For the purposes of administering individual loans to

public agencies, the department shall establish a reasonable schedule of administrative fees for loans, which shall be paid by the applicant pursuant to Section 15063 to reimburse the department for its actual and necessary costs for the administration of those loans. Administrative fees shall not be imposed for any other purpose.

(b) Charges incurred by the Attorney General in protecting the state's interests in the use and repayment of loan funds under this chapter shall be paid from the proceeds of bond sales for purpose of this chapter. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as program expense not to exceed one-half of 1 percent of the total amount of the bonds authorized to be sold for purposes of this chapter.

15063. Any contract entered into pursuant to this chapter for a project may include provisions as may be determined by the department and shall include, in substance, all of the following provisions:

(a) A finding by the department that the public agency has the ability to repay the loan, that the project is economically justified, and that the project is feasible from an engineering and geologic standpoint.

(b) An estimate of the reasonable cost and benefit of the project.

(c) An agreement by the public agency to proceed expeditiously with and complete the project.

(d) A prohibition against any moratorium or deferment on payments of principal or interest.

(e) The public agency shall demonstrate, to the satisfaction of the department, that an adequate opportunity for public participation regarding the loan has been provided.

(f) Any election held with respect to the loan shall include the entire public agency, unless the agency proposes to accept the loan on behalf of a specified portion, or portions, of the agency, in which case the election shall be held in that portion or portions of the agency only.

(g) Annual principal and interest payments shall commence not later than one year after completion of the project, and all loans shall be fully amortized not later than 20 years after project completion.

(h) The recipient of a loan shall establish a dedicated source of revenue for repayment of the loan.

(i) Any loans made pursuant to this chapter may be for a period of up to 20 years. The interest rate for the loans shall be set at a rate equal to the interest rate paid by the state on the most recent sale of state general obligation bonds, with that rate to be computed according to the true interest cost method. If the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent. The interest rate for each contract shall be applied throughout the repayment period of the contract. There shall be a level annual repayment of principal and interest on the loans. The amount of the principal shall include the administrative fee specified in subdivision

(a) of Section 15062.

15064. No project may receive more than ten million dollars ($10,000,000) in loans from the department. Loans may be made for all or any part of the construction cost of the project, except for any costs allocable to the secondary purposes of flood control and power production. However, in no event shall the loan be in an amount greater than the proportion of the construction cost of the project which the department finds to be beyond the reasonable ability of the public agency to finance from other sources.

15065. (a) The department may make loans to public agencies for the acquisition of interests in lands that are necessary for the construction, operation, or maintenance of proposed projects that are eligible for loans under this chapter. The loans may be made separate and apart from loans that may be made under this chapter for the construction of proposed projects.

(b) The making of a loan pursuant to this section is subject to all of the following conditions:

(1) The loan may be made for all, or any part, of the cost of acquiring interests in lands for a proposed project, but in no event shall the loan be in an amount greater than the portion of those costs which the department finds to be beyond the reasonable ability of the public agency to finance from other sources.

(2) The loan shall not exceed five million dollars ($5,000,000) for a project.

(c) The loan shall be repayable with interest upon the same terms as are applicable to construction loans that are made pursuant to this chapter, as set forth in Section 15063.

The contract shall require the sale of the interest in lands that are acquired with the loan if, in the department's determination, the construction of the proposed project has not commenced within 10 years from the date of the first disbursement of loan funds under the contract or with any extension of that period that the department may allow.

The contract shall require, in that situation, that the interest in land be offered for sale within six months from the termination of the 10-year period or of any extension thereof, and that the proceeds of the sale be applied to the repayment of the principal amount of the loan and the payment of the accrued interest thereon. Any remaining proceeds after deducting administrative costs of the public agency in the purchase and sale of the interest in the lands shall be repaid to the state.

15066. Notwithstanding any other provision of law, any land acquired with a loan made pursuant to Section 15063, which is located outside the boundaries of the public agency acquiring the land and which was subject to taxation at the time of acquisition, shall remain subject to taxation.

15067. The department may make loans from money in the Mitigation and Enhancement Subaccount to public agencies to aid in the mitigation of the environmental impacts of projects on fish and

wildlife resources or to aid in the enhancement of fish and wildlife resources, or both. One million dollars ($1,000,000) shall be used for mitigation purposes, and one million dollars ($1,000,000) for enhancement purposes.

15068. (a) The department may make loans to public agencies, under terms and conditions that may be determined necessary by the department, for the purposes of financing feasibility studies of projects potentially eligible for funding pursuant to this chapter. The amount of a feasibility loan shall not exceed 10 percent of the estimated cost of the proposed project or five hundred thousand dollars ($500,000), whichever is less. The interest rate on the feasibility loans shall be the same as the interest rate for all other loans made under this chapter.

(b) Not more than 10 percent of the total amount of bonds authorized to be issued for purposes of this chapter shall be available for loans for feasibility studies.

15069. Applications for loans under this chapter shall be made to the department in the form and with supporting material that may be prescribed by the department. Applications shall require the applicant to specify any other sources of funding for the proposed project, and those additional sources of funding shall be considered in determining approval of the application. Applications shall also include supporting material demonstrating the ability of a public agency to repay the loan and to finance the proposed project.

15070. (a) Before a public agency may enter into a contract with the department for a construction or land acquistion loan under this chapter, the public agency shall hold an election on the proposition of whether or not the public agency shall enter into the proposed contract and more than 50 percent of the votes cast at that election shall be in favor of the proposition, except that, if a higher percentage of favorable votes is required for the issuance of any bonds by the public agency or is required by the California Constitution before the public agency may incur an indebtedness, that higher percentage shall apply.

(b) The election shall be held in accordance with Article 9 (commencing with Section 12889) of Chapter 5 of Part 6 of Division 6.

15071. The department shall keep full and complete records and accounts concerning all of its transactions under this chapter and shall annually submit a report on those transactions to the Legislature.

15072. In order to effectuate loans made by the department pursuant to this chapter, the Controller shall, upon demand of the department, draw warrants made payable to those public agencies and in the amounts as are, from time to time, designated by the department. The Treasurer shall pay the warrants from available money.

15073. (a) The Controller shall audit the books and records of public agencies receiving loans pursuant to this chapter, as the

Controller may determine to be necessary from time to time, for the purposes of determining whether the loans have been expended for the purposes authorized, and under the conditions required, by this chapter.

(b) Whenever the Controller determines that any money paid to a public agency has been expended by the public agency for purposes not authorized by this chapter, or exceeds the final cost of the project for which a loan was made, or exceeds the final cost of the feasibility report for which a loan was made, the Controller shall furnish written notice to the department and to the public agency directing the public agency to pay into the State Treasury the amount of those unauthorized expenditures, or the amount in excess of the final authorized cost of the project or the feasibility report. Upon receipt of that notice, the public agency shall, at the time specified therein, pay to the Treasurer the amount set forth in the notice. That amount shall, upon order of the Controller, be deposited in the State Treasury to the credit of the fund to be available for the purposes of this chapter.

(c) The public agency shall make the payment to the Treasurer, and the Controller shall make that collection.

15074. All loans made pursuant to this chapter are subject to the approval of the California Water Commission.

15075. No member of the California Water Commission shall participate in the action of the commission in considering for approval, or approving, a loan under this chapter to a public agency of which he or she is an officer, employee, agent, consultant, accountant, engineer, or legal counsel or in which he or she owns real property.

15076. The Legislature may amend this chapter by either of the following methods:

(a) By statute, passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with the purposes of this chapter.

(b) By a statute that becomes effective only when approved by the voters.

CHAPTER 3. FLOOD CONTROL PROGRAM OF 1990

15100. This chapter shall be known and may be cited as the Flood Control Act of 1990.

15101. The Flood Control Account is hereby created in the fund. The sum of ninety million dollars ($90,000,000) is hereby transferred from the fund to the account for the purpose of implementing this chapter.

15102. The money in the account shall be available, when appropriated by the Legislature, for the state share of the nonfederal costs of flood control and flood prevention projects as are now authorized under the State Water Resources Law of 1945 (Chapter

1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6 of Division 6), the Flood Control Law of 1946 (Chapter 3 (commencing with Section 12800) of Part 6 of Division 6), and the California Watershed Protection and Flood Prevention Law (Chapter 4 (commencing with Section 12850) of Part 6 of Division 6), including credits and loans to local agencies under Sections 12585.3, 12585.4, 12866.3, and 12866.4, and for expenditures under Chapter 3.5 (commencing with Section 12840) of Part 6 of Division 6.

Notwithstanding Section 12657, the money in the Flood Control Account shall only be available for a project which is expressly authorized by Congress and the Legislature and specifically listed by name in federal and state statute as of January 1, 1991, or which is authorized as a small flood control project under Section 12750 or as a watershed protection project under Section 12868.

15103. The department may adopt rules and regulations, including emergency regulations, necessary to carry out the purposes of this chapter.

15104. The Legislature may amend this chapter by either of the following methods:

(a) By statute, passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with the purposes of this chapter.

(b) By a statute that becomes effective only when approved by the voters.

CHAPTER 4. CALIFORNIA SAFE DRINKING WATER AND DROUGHT RELIEF

Article 1. General Provisions

15125. This chapter shall be known and may be cited as the California Safe Drinking Water and Drought Relief Act.

15126. The Legislature hereby finds and declares all of the following:

(a) The State Department of Health Services has discovered toxic contaminants in many of California's public drinking water systems.

(b) Many of the contaminants in California's drinking water supplies are known or suspected of causing cancer, birth defects, and other serious illnesses.

(c) It is unlikely that the toxic contamination problems of small public water systems can be solved without financial assistance from the State of California.

15127. The Legislature further finds and declares that the protection of the health, safety, and welfare of the people of California requires that water supplied for domestic purposes be at all times pure, wholesome, and potable, and that it is in the interest of the people that the State of California provide technical and

financial assistance to the end that the people of California are ensured a safe, dependable, and potable supply of water for domestic purposes and that water is available in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes.

15128. The Legislature further finds and declares that it is the intent of the Legislature to provide for the upgrading of existing public water supply systems to ensure that all domestic water supplies meet safe drinking water standards established under Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, but that any additional capacity be financed by other sources unless excessive costs would be incurred by later expansion of the water system.

15129. The Legislature further finds and declares that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and it is in the interest of the people of the State of California to encourage the consolidation of the management or the facilities, or both, of small water systems to enable them to better address their water contamination problems.

15130. The Legislature hereby finds and declares all of the following:

(a) The State of California is in a fourth year of drought, with three of the last four years being critically dry.

(b) If the 1990–91 water year is dry, or even normal, there will be widespread areas of water shortage which could impose severe health, economic, and environmental hardship.

15131. As used in this chapter, the following terms have the following meanings:

(a) "Applicant" means any person or entity that applies for funding under this chapter.

(b) "Cost-effective project" means a project that achieves an acceptable result at the most reasonable cost.

(c) "Drought relief project" means proposed facilities or improvements to alleviate the effects of drought, and may include all works set forth in Section 15171 as necessary to carry out the purposes of Article 3 (commencing with Section 15170).

(d) "Funding" means a loan or a grant, or both, awarded under this chapter.

(e) "Health services" means the State Department of Health Services.

(f) "Project" means proposed facilities for the construction, improvement, or rehabilitation of a public water system, and may include all items set forth in Section 15157 as necessary to carry out the purposes of this chapter.

(g) "Public agency" means any city, county, city and county, district, or joint powers authority, which owns, operates, or controls a public water system.

(h) "Public water system" or "public water supply system" means

a system for the provision to the public of piped water for human consumption, as defined in Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, as it may be amended from time to time.

(i) "Safe drinking water standards" means those standards established pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, as they may now or hereafter be amended.

(j) "Supplier" means any person, partnership, corporation, association, public agency, or other entity which owns or operates a public water system.

Article 2. California Safe Drinking Water Program

15150. There is hereby created in the Safe Drinking Water and Drought Relief Account the Safe Drinking Water Subaccount for the purpose of implementing this article.

15151. Notwithstanding Section 13340 of the Government Code, the sum of sixty million dollars ($60,000,000) is hereby transferred from the Safe Drinking Water and Drought Relief Account to the Safe Drinking Water Subaccount and is hereby continuously appropriated, without regard to fiscal years, for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Criteria to be met to be eligible for consideration for funding under this subdivision are to be established jointly by the department and health services and shall include all of the following:

(a) All preliminary design work for a defined project that will enable the applicant to supply water that meets safe drinking water standards, including a cost estimate for the project, has been completed.

(b) A legal entity is in existence that has the authority to enter into contracts and incur debt on behalf of the community to be served and owns the public water system or has the right to operate the public water system under a lease with a term of at least 20 years, unless otherwise authorized by the department. If the proposed project is funded by a loan under this article, the department may require the applicant to secure a lease for the full term of the loan if it exceeds 20 years.

(c) The applicant has applied for all necessary permits.

(d) The applicant holds all necessary water rights.

(e) The applicant has completed a preliminary review as required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the guidelines adopted pursuant thereto, and has included plans for compliance with that act in its preliminary plans for the project.

(f) The applicant has assembled sufficient financial data to establish its ability to complete the proposed project and the amount of debt financing it can undertake.

(g) The applicant has made reasonable efforts to secure federal or other financial assistance for the project.

15152. Health services shall notify suppliers and public agencies that may be eligible for funding for the purposes of this article pursuant to this article and the rules and regulations adopted by the department.

15153. (a) Health services, after public notice and hearing and with the advice of the department, shall, from time to time, adopt a priority list of proposed projects to be considered for funding under this article. In doing so, health services shall determine if improvement or rehabilitation of a public water system is necessary to provide pure, wholesome, and potable water in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes. Health services shall adopt criteria for placing public water systems on a priority list for funding based upon the health effects of the current water quality. First priority shall be given to public water systems with the most critical public health problems.

(b) Consideration of an applicant's eligibility for funding shall initially be based on the priority list in effect at the time the application is received. If a new priority list is adopted during the time the application is under consideration, but before the applicant receives a letter of commitment, the department and health services may consider the applicant's eligibility for funding based on either the old or new priority list.

(c) Notwithstanding subdivision (a) or any other provision of law, the priority list adopted by health services pursuant to the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7) in effect on November 7, 1990, may, at the option of health services, be utilized upon voter approval of this chapter until health services adopts a new priority list.

15154. Applications for funding under this article shall be made in the form and with the supporting material prescribed by the department and health services.

15155. The department and health services shall determine, based on applications received, whether a particular applicant meets the criteria to be eligible for consideration for project design and construction funding.

If the applicant does not meet the criteria, it may be considered for planning and preliminary engineering study funding. Applicants successfully completing a study are eligible for consideration for project design and construction funding after their study is completed and they have met the criteria to be eligible for consideration for project design and construction funding.

15156. (a) No application for funding of project design and construction or planning and preliminary engineering studies shall be approved by the department, and no loans or grants for those purposes shall be made by the department, unless and until health services certifies, in writing, that the proposed study or project is necessary to enable the applicant to meet safe drinking water

standards, and is reviewed for consistency with an adopted countywide consolidation plan, if any. Health services may refuse to certify a study or project if it determines that the purposes of this article may more economically and efficiently be met by means other than the proposed study or project. The department, upon the recommendation of health services, may make reasonable allowance for future water supply needs and may provide for additional capacity when excessive costs would be incurred by later enlargement. Health services may limit funding to costs necessary to enable suppliers to meet primary drinking water standards, as defined in Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code.

(b) With respect to applications for funding of project design and construction, health services shall also certify, in writing, all of the following:

(1) Upon completion of the project, the applicant will be able to supply water that meets safe drinking water standards.

(2) The project is cost-effective.

(3) If the entire project is not to be funded under this chapter, health services shall specify which costs are eligible for funding.

15157. Project design and construction costs eligible for funding under this article shall be established by the department with the advice of health services and may include any of the following:

(a) Reasonable costs for the construction, improvement, or rehabilitation of facilities of the public water system, which may include water supply, treatment works, and all or part of a water distribution system, if necessary to carry out the purposes of this chapter.

(b) Reasonable costs associated with the consolidation of water systems, including, but not limited to, reasonable facility fees, connection fees, or similar charges.

(c) Reasonable costs of purchasing water systems, water rights, or watershed lands.

(d) Operation and maintenance costs only to the extent they are used in the start up and testing of the completed project. All other operation and maintenance costs shall be the responsibility of the supplier and may not be considered as part of the project costs.

(e) Reasonable costs of establishing eligibility for funding under this article that were incurred before the department entered into a commitment to fund the project under this article.

15158. Upon receipt of an application for funding pursuant to this article, the department shall propose to the applicant improvements to the applicant's water development distribution and utilization system which will conserve water in a cost-effective manner. These improvements may include, but need not be limited to, leak detection and repair programs, valve repair and replacement, meter calibration and replacement, physical improvements to achieve corrosion control, distribution and installation of water conservation devices and fixtures, and other capital improvements which can be

demonstrated to conserve water in a cost-effective manner. The department, health services, and the applicant may agree to include these capital improvements in the grant or loan. Failure by the applicant to include water conservation capital improvements in the application shall not be sufficient cause for the department to deny funding.

15159. (a) Project design and construction costs and planning and preliminary engineering studies may be funded under this article by loans or, in the case of public agencies, by grants, or by any combination thereof.

(b) A single application for funding shall be filed.

(c) The department shall determine what portion of the full costs the public agency is capable of repaying and authorize funding in the form of a loan for that amount. The department shall authorize a grant only to the extent that the department finds that the public agency is unable to repay the full costs of a loan.

(d) At the request of the department, the Public Utilities Commission shall submit comments concerning the ability of suppliers subject to its jurisdiction to finance the project from other sources and to repay the loan.

15160. Not more than 35 percent of the proceeds of the bonds authorized to be issued for purposes of this article shall be used for grants. This amount shall include grants for all purposes authorized by this article. A grant may be made by the department only upon the specific approval of the Legislature.

15161. Loans for project design and construction shall be repaid over a term not longer than the useful life of the project constructed or 35 years, whichever is shorter.

15162. (a) The maximum amount of a grant permitted under this article for the design and construction of a single project is four hundred thousand dollars ($400,000), except that the maximum amount is six hundred thousand dollars ($600,000) for a grant for construction of a new water system to a public agency which has a population of less than 3,500 and is outside of any urbanized area designated by the United States Bureau of the Census from the 1980 federal census. The maximum amount of a loan permitted under this article for the design and construction of a single project is five million dollars ($5,000,000).

(b) A single entity may apply for funding for more than one design and construction project if each proposed project concerns a separate identifiable public water system. In such a case, the maximum amount of grant permitted is three hundred thousand dollars ($300,000) for each water system, up to a maximum of one million five hundred thousand dollars ($1,500,000) for each entity. The maximum amount of loan permitted is five million dollars ($5,000,000) for each water system, up to a maximum of ten million dollars ($10,000,000) for each entity.

(c) If a project includes the consolidation of two or more separate public water systems, the maximum amount of a grant permitted

under this article is three hundred thousand dollars ($300,000) for each water system, not to exceed one million five hundred thousand dollars ($1,500,000) for each consolidated project. The maximum amount of a loan permitted for a single project that includes the consolidation of two or more separate public water systems is five million dollars ($5,000,000) for each water system, not to exceed ten million dollars ($10,000,000) for each consolidated project.

(d) Total funding under this article of project design and construction costs, whether in the form of a loan or a grant, or both, may not exceed five thousand dollars ($5,000) per service connection unless otherwise authorized by the Legislature. This subdivision does not preclude funding projects that exceed the five thousand dollars ($5,000) per service connection limit if funding for costs that exceed that amount can be obtained from other sources.

15163. An applicant who has executed a contract for funding under this article may not apply for funding for an additional study or project pursuant to this article in connection with the same public water system unless the additional study or project is necessitated by safe drinking water standard violations that came into existence after the initial contract was entered into or resulted from a change in safe drinking water standards occurring after the initial contract was entered into.

Article 3. Drought Relief Program

15170. Notwithstanding Section 13340 of the Government Code, the sum of twenty million dollars ($20,000,000) is hereby transferred from the California Safe Drinking Water and Drought Relief Account to the Drought Relief Subaccount, which is hereby created in the account, and is hereby continuously appropriated, without regard to fiscal years, for the design and construction of drought relief projects. The department shall adopt criteria it will use in evaluating projects. The criteria shall include all of the following:

(a) The applicant owns or operates a public water system which, because of persistent drought, is temporarily unable to supply adequate amounts of water for municipal, commercial, or industrial purposes.

(b) The applicant is a legal entity authorized to enter into contracts and incur debt on behalf of the community to be served and owns the public water system or has the right to operate the public water system under a lease with a term of at least 20 years.

(c) The applicant proposes one or more drought relief projects, the primary purpose of which is to provide an additional water supply, or to conserve the use of the existing water supply, for municipal, commercial, or industrial purposes in a timely manner sufficient to help alleviate the effects of the drought episode occurring at the time the application is made. Drought relief projects funded pursuant to this article shall not include works or facilities, the primary purpose of which is to increase the applicant's water

supply to serve future community growth or agricultural users.

(d) The technical feasibility of the project.

(e) The applicant has implemented a water conservation program which is satisfactory to the department.

(f) The applicant has completed a preliminary review as required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the guidelines adopted pursuant to that act, and has included plans for compliance with that act in its proposal.

(g) The severity of the drought in the area served by the applicant, based on factors including the amount of rainfall, the adequacy of reservoir storage, and the availability of groundwater.

(h) Priority shall be given to projects necessary for public health and safety reasons.

15171. Drought relief project design and construction costs eligible for funding under this article shall be established by the department and may include any of the following:

(a) Reasonable costs for the design, construction, improvement, or rehabilitation of facilities of the public water system, which may include, but are not limited to, the acquisition of water rights, drilling or improving wells, conveyance facilities, treatment facilities, facilities to convey reclaimed water, improvements to increase the efficiency of water distribution systems, or the acquisition and distribution of domestic water conservation equipment, as necessary to carry out the purposes of this article.

(b) Operation and maintenance costs only to the extent that they are used in the startup and testing of the completed project. All other operation and maintenance costs shall be the responsibility of the supplier and may not be considered as part of the project costs.

(c) Reasonable costs of establishing eligibility for funding under this article that were incurred before the department entered into a commitment to fund the drought relief project.

15172. The department shall award loans for projects after evaluating applications based on criteria adopted pursuant to Section 15170. For drought relief projects which the department determines should be funded, the department shall determine what portion of the full cost the applicant is capable of repaying and may authorize funding of that amount in the form of a loan. Loans shall be repaid over a term not longer than 20 years.

Article 4. Administrative Provisions

15180. (a) The sum of eighty million dollars ($80,000,000) is hereby transferred from the fund to the California Safe Drinking Water and Drought Relief Account, which is hereby created in the fund.

(b) From time to time, the department may establish other subaccounts in the account which the department determines are appropriate or necessary for proper administration consistent with

the purposes of this chapter.

15181. (a) The department may adopt emergency regulations to implement Article 3 of this chapter.

(b) The emergency regulations adopted pursuant to subdivision (a) shall be adopted by the department 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 shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, 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, the emergency regulations adopted by the department shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the department.

15182. (a) The department may enter into contracts with applicants for grants or loans for the purposes set forth in this chapter. Any contract entered into pursuant to this section shall include only terms and conditions consistent with this chapter and the rules and regulations adopted under this chapter.

(b) The contract shall include all of the following terms and conditions that are applicable:

(1) An estimate of the reasonable cost of the project or study.

(2) An agreement by the department to loan or grant, or loan and grant, the applicant an amount which equals the portion of the costs found by the department to be eligible for a state loan or grant. The agreement may provide for disbursement of funds during the progress of the study or construction, or following completion of the study or construction, as agreed by the parties.

(3) An agreement by the applicant to proceed expeditiously with the project or study.

(4) An agreement by the applicant to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law.

(5) In the case of a loan made pursuant to Article 2 (commencing with Section 15150), an agreement by the applicant to repay the state, over a period not to exceed the useful life of the project or 35 years, whichever is shorter, or, in the case of a study, over a period not to exceed five years, or, in the case of a loan made pursuant to Article 3 (commencing with Section 15170), over a period not to exceed 20 years, all of the following:

(A) The amount of the loan.

(B) The administrative fee specified in subdivision (a) of Section 15185.

(C) Interest on the principal, which is the amount of the loan plus the administrative fee.

(6) In the case of a project grant, an agreement by the supplier to operate and maintain the water system for a period of 20 years,

unless otherwise authorized by the department.

(c) The contract may include any of the following terms and conditions:

(1) An agreement by the supplier to adopt a fee structure which provides for the proper maintenance and operation of the project and includes a sinking fund for repair and replacement of the facilities in cases where appropriate. The fee structure shall also provide for the repayment of the amount of the loan and of administrative fees, and for the payment of interest.

(2) If the entire project or study is not being funded pursuant to this chapter, the department may include a provision requiring the applicant to share the cost of the project or obtain funding from other sources.

(d) The department may require applicants to provide security for loan contracts.

15183. All funding received under this chapter shall be expended by the applicant within three years of the execution of the contract with the department. The three-year period may be extended with the approval of the department until five years after the date the original contract, not including amendments, was executed.

15184. (a) The department shall annually establish the interest rate for loans made pursuant to this chapter at 50 percent of the average interest rate, computed by the true interest cost method, paid by the state on general obligation bonds issued in the prior calendar year. All loans made pursuant to this chapter shall carry the interest rate established for the calendar year in which the funds are committed to the loan, as of the date of the letter of commitment. The interest rate set for each loan shall be applied throughout the repayment period of the loan. Interest on the loan shall not be deferred.

(b) The department shall require the payment of interest on each loan issued under the California Safe Drinking Water Bond Law of 1976 (Chapter 10.5 (commencing with Section 13850) of Division 7), as required under Section 13867 at a rate equal to 50 percent of the average interest rate, computed by the true interest cost method, paid by the state on general obligation bonds sold pursuant to that chapter up to November 7, 1990. The interest rate established in this section shall be applied retroactively for the full term of all loans issued under the Safe Drinking Water Bond Law of 1976 from the date of issuance.

15185. (a) For purposes of administering this chapter, the total expenditures of the department and health services may not exceed 5 percent of the total amount of the bonds authorized to be issued for purposes of this chapter. The department shall establish a reasonable schedule of administrative fees for loans, which shall be paid by the applicant to reimburse the state for the costs of the state administration of this chapter.

(b) Charges incurred by the Attorney General in protecting the state's interests in the use and repayment of grant and loan funds

under this chapter shall be paid from the proceeds of bonds issued for the purposes of this chapter. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as a program expense not to exceed one-half of 1 percent of the total amount of the bonds authorized to be sold under this chapter.

15186. As approved annually by the Legislature in the Budget Act, the department may expend money repaid to the state pursuant to any contract executed under subdivision (a) of Section 15182 as necessary for the administration of contracts entered into by the department under this chapter, but those expenditures may not in any year exceed 1.5 percent of the amount of principal and interest projected to be paid to the state in that year pursuant to this chapter.

Charges incurred by the Attorney General in protecting the state's interest in the use of funds and repayment of funds under this chapter may be paid by the department from these funds, but those charges may not exceed one-half of 1 percent of the amount of principal and interest projected to be paid to the state in that year pursuant to this chapter.

Any of these sums approved by the Legislature, but unexpended by the department at the end of any year, shall automatically revert to the General Fund.

15187. Except as provided in Section 15186, all money repaid to the state pursuant to any contract executed under subdivision (a) of Section 15182 shall be deposited in the General Fund and, when so deposited, shall be applied as a reimbursement to the General Fund on account of principal and interest on bonds issued pursuant to this chapter which has been paid from the General Fund.

15188. Notwithstanding any other provision of law, the proceeds of any bonds authorized to be issued under the California Safe Drinking Water Bond Law of 1976 (Chapter 10.5 (commencing with Section 13850) of Division 7), the California Safe Drinking Water Bond Law of 1984 (Chapter 10.2 (commencing with Section 13810) of Division 7), the California Safe Drinking Water Bond Law of 1986 (Chapter 10.7 (commencing with Section 13895) of Division 7), and the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7) which are unobligated on November 7, 1990, shall be used for loans and grants to applicants in accordance with the terms, conditions, and purposes of Article 2 (commencing with Section 15150).

15189. The unobligated amount in the Drought Relief Subaccount shall be transferred to the Safe Drinking Water Subaccount on January 1, 1996, for the purpose of implementing Article 2 (commencing with Section 15150).

15190. (a) The department, after public notice and hearing, and with the concurrence of health services, shall adopt rules and regulations necessary to carry out the purposes of Article 2 of this chapter and that will, in its judgment, effectively carry out this chapter in the public interest, to the end that the people of California are efficiently and economically provided supplies of pure,

wholesome, and potable domestic water and afforded relief from the effects of the drought.

(b) Notwithstanding subdivision (a) or any other provision of law, existing rules and regulations not inconsistent with this chapter in effect on November 7, 1990, may, at the option of the department, be utilized upon voter approval of this division for purposes of implementing this chapter.

15191. The department shall prepare an annual report on all grant commitments made or grant contracts entered into pursuant to this chapter. The report shall be filed with the Legislature if it is in session or, if it is not in session, with the Joint Rules Committee. The report shall be filed on or before January 31 of each year for grant commitments made or grant contracts entered into by the department during the previous calendar year.

15192. The Legislature may amend this chapter by either of the following methods:

(a) By statute, passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with the purposes of this chapter.

(b) By a statute that becomes effective only when approved by the voters.

CHAPTER 5. WATER QUALITY AND WATER CONSERVATION

Article 1. General Provisions

15200. This chapter shall be known and may be cited as the Water Quality and Water Conservation Act.

15201. The Legislature finds and declares as follows:

(a) It is of paramount importance that the limited water resources of the state be protected from pollution, conserved, and reclaimed whenever possible to ensure continued economic, community, and social growth.

(b) Because water knows no political boundaries, it is desirable for the state to contribute to the construction of needed facilities in order to meet its obligations to protect and promote the health, safety, and welfare of its people and the environment.

(c) The people of California have a primary interest in the development of facilities to reclaim waste water to supplement existing water supplies and to assist in meeting the future water needs of the state. A significant portion of the future water needs of California may be met by the use of reclaimed water.

(d) Local public agencies have the primary responsibility for the construction, operation, and maintenance of water reclamation facilities.

(e) Local public agencies need financial assistance to make cost-effective reclamation projects financially feasible.

(f) It is the intent of this chapter to provide funds for the design

and construction of eligible water reclamation projects and for the development and implementation of programs and activities that lead to increased use of reclaimed water in California.

15202. The Legislature further finds and declares all of the following:

(a) Sewage and toxic pollution originating across the international border has created an intolerable threat to the health and safety, and to the aesthetic, social, and economic well-being, of the people of California. San Diego and Imperial Counties, constituting a major region of this state, have immediate health and safety problems directly associated with sewer effluents, and unrestricted flows of polluted and toxic waters, originating across the international border.

(b) Despite more than 50 years of good faith effort by California and the federal government, the problem continues to grow with ever-worsening consequences for the region.

(c) This problem is certain to intensify as both the Cities of Tijuana and Mexicali are expanding rapidly and Mexico's population continues to rise.

(d) The solution to these problems is certain to be expensive in both capital costs and long-term operational and maintenance costs. An agreement between the federal government, Mexican officials, and state representatives on a partial solution of these problems is near completion. The state's financial commitment to this agreement will be joined with financial backing from the federal government and Mexico.

15203. The Legislature further finds and declares as follows:

(a) Clean water is essential to the public health, safety, and welfare.

(b) Clean water fosters the beauty of California's environment and the expansion of industry and agriculture, maintains fish and wildlife, and supports recreation.

(c) California's abundant lakes and ponds, streams and rivers, coastline, and groundwater are threatened with pollution, which could threaten public health and impede economic and social growth if left unchecked.

(d) The state's growing population has increasing needs for clean water supplies and adequate treatment facilities.

(e) It is of paramount importance that the limited water resources of the state be protected from pollution to ensure continued economic, community, and social growth.

(f) The chief cause of water pollution is the discharge of inadequately treated waste into the waters of the state.

(g) Local public agencies have the primary responsibility for the construction, operation, and maintenance of facilities to cleanse our waters.

(h) Rising costs of construction and technological changes have pushed the cost of constructing treatment facilities beyond the reach of many small communities.

(i) Because water knows no political boundaries, it is desirable for the state to contribute to construction of needed facilities in order to meet its obligations to protect and promote the health, safety, and welfare of its people and environment.

(j) It is the intent of this chapter to provide special assistance to small communities to construct facilities necessary to eliminate water pollution and public health hazards.

15204. As used in this chapter, the following words have the following meanings:

(a) "Construction" has the same meaning as in the federal act.

(b) "Eligible project" means a project for a small community for the construction of treatment works which is all of the following:

(1) Necessary to prevent pollution or a public health hazard.

(2) Eligible for federal assistance pursuant to Title VI of the federal act.

(3) Certified by the board as entitled to priority over other treatment works, and complies with applicable water quality standards, policies, and plans.

(c) "Eligible reclamation project" means a water reclamation project which is cost-effective when compared to the development of other new sources of water. These projects shall comply with applicable water quality standards, policies, and plans.

(d) "Federal assistance" means funds available to a local agency pursuant to the federal act.

(e) "Federal act" means the federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) and any acts amendatory thereof or supplementary thereto.

(f) "Local public agency" means any city, county, district, joint powers authority, or any other local public body or political subdivision of the state created by or pursuant to state law and involved with water or waste water management.

(g) "Groundwater recharge facilities" means land and facilities for artificial groundwater recharge through methods which include, but are not limited to, either percolation using basins, pits, ditches, furrows, modified streambeds, flooding, and well injection or in-lieu recharge.

"Groundwater recharge facilities" also means capital outlay expenditures to expand, renovate, or restructure land and facilities already in use for groundwater recharge. Groundwater recharge facilities may include either of the following:

(1) Instream facilities for the regulation of water levels, but not the regulation of streamflow by storage to accomplish diversion from waterways.

(2) Conveyance facilities to the recharge site, including devices for flow regulation and measurement of recharge waters.

Any portion or all of the project facilities, including land under the facilities, may consist of separable features, or an appropriate share of multipurpose features of a larger system, or both.

(h) "Groundwater treatment facilities" includes any devices or

systems used to treat groundwater to provide a potable or usable source of water or devices or systems used to remedy groundwater pollution problems caused by nonpoint sources, including, but not limited to, well head treatment.

(i) "In-lieu recharge" means accomplishing increased storage of groundwater by providing surface water to a user who relies on groundwater as a primary supply, in order to accomplish groundwater storage through the direct use of that surface water in lieu of pumping groundwater.

(j) "Municipality" has the same meaning as in the federal act and also includes the state or any agency, department, or political subdivision thereof.

(k) "Small community" means a municipality with a population of 5,000 persons or less, or a reasonably isolated and divisible segment of a larger municipality encompassing 5,000 persons or less, with a financial hardship as defined by the board.

(*l*) "State grant" means a grant given to a qualifying small community eligible for federal assistance under Title VI of the federal act.

(m) "State Water Pollution Control Revolving Fund" means the fund created by Section 13477.

(n) "Treatment works" has the same meaning as in the federal act.

(o) "Voluntary cost-effective capital outlay water conservation programs" means those feasible capital outlay measures to improve the efficiency of water use through benefits which exceed their costs. The programs include, but are not limited to, lining or piping of ditches; improvements in water distribution system controls, such as automated canal control, construction of small reservoirs within distribution systems which conserve water that already has been captured for reuse, and related physical improvements; tailwater pumpback recovery systems to reduce leakage; and capital changes in on-farm irrigation systems which improve irrigation efficiency, such as sprinkler or subsurface drip systems.

Article 2. Water Quality and Water Conservation Program

15210. (a) The Water Quality and Water Conservation Account is hereby created in the fund. The sum of one hundred eighty-five million dollars ($185,000,000) is hereby transferred from the fund to the account. There is hereby created in the account a Water Reclamation Subaccount for the purpose of implementing Section 15211, a Border Area Water Pollution Control Subaccount for the purpose of implementing Section 15212, a Clean Water Subaccount for the purpose of implementing Section 15213, a Groundwater Treatment Subaccount for the purpose of implementing Section 15214, and a Water Conservation and a Groundwater Recharge Subaccount for the purpose of implementing Section 15215.

(b) From time to time, the board or the department may establish

other subaccounts in the account which the board or the department determines are appropriate or necessary for proper administration.

15211. (a) The sum of ninety-five million dollars ($95,000,000) is hereby transferred from the account to the Water Reclamation Subaccount and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated, without regard to fiscal years, to the board for loans to local public agencies authorized to construct, operate, and maintain water reclamation projects, to aid in the design and construction of eligible water reclamation projects.

(b) Any loan contract for an eligible water reclamation project entered into pursuant to this section may include provisions as determined by the board and shall include both of the following provisions:

(1) An estimate of the reasonable cost of the eligible water reclamation project.

(2) An agreement by the local public agency to proceed expeditiously with, and complete, the eligible water reclamation project, commence operation of the project in accordance with applicable provisions of law, and provide for the payment of the local public agency's share of the cost of the project, including principal and interest on any state loan made pursuant to this section.

(c) (1) Loan contracts may not provide for a moratorium on payments of principal or interest.

(2) Any loans made from the Water Reclamation Subaccount may be for a period of up to 20 years.

(3) The board may make loans up to 100 percent of the total eligible cost of the design and construction of an eligible reclamation project.

(d) (1) The interest rate for the loans shall equal 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, with that rate to be computed according to the true interest cost method.

(2) If the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent.

(3) All loans made pursuant to this section shall carry the interest rate established pursuant to this section as of the date of the letter of commitment for the loan. The interest rate set for each loan shall be applied throughout the repayment period of the loan.

(e) As approved by the Legislature annually in the Budget Act, the board may expend for the administration of this section not more than 5 percent of the amount of the bond funds authorized to be deposited in the Water Reclamation Subaccount.

(f) As approved by the Legislature annually in the Budget Act, the board may, by contract or otherwise, undertake plans, surveys, research, development, and studies necessary, convenient, or desirable to carry out the purposes of this section, and may prepare recommendations with regard thereto, including the preparation of comprehensive statewide or areawide studies and reports on water

reclamation and the collection, treatment, and disposal of waste under a comprehensive cooperative plan.

(g) The board may adopt rules, regulations, and guidelines necessary or appropriate to carry out this section.

(h) All principal and interest payments from loans shall be deposited in the Water Reclamation Subaccount for new loans.

15212. (a) The sum of thirty million dollars ($30,000,000) is hereby transferred from the account to the Border Area Water Pollution Control Subaccount.

(b) The money in the Border Area Water Pollution Control Subaccount shall be available, upon appropriation by the Legislature in the Budget Act, for activities necessary to correct conditions of pollution resulting from wastewater and toxic flows across the international border. Funds may be expended for all necessary costs incurred to implement a solution to the problem, including research; preparation of plans, surveys, studies, and designs; startup costs; and construction of facilities necessary to mitigate, reduce, or reverse the effects of pollution and contamination on the international border. The money in the subaccount may also be expended, upon appropriation by the Legislature in the Budget Act, for demonstration projects involving alternative waste water management and reclamation systems.

(c) It is the intent of the Legislature that, to the extent possible, the bond funds in the Border Area Water Pollution Control Subaccount be expended in accordance with the following formula:

(1) Fifty percent for projects related to the New River/Alamo River and Salton Sea.

(2) Fifty percent for projects related to the Tijuana River sewage pollution.

(d) Bond funds may also be appropriated by the Legislature to administer this section, except that not more than 5 percent of the bond funds authorized to be deposited in the subaccount shall be used for those administrative purposes.

15213. (a) The sum of twenty million dollars ($20,000,000) is hereby transferred from the account to the Clean Water Subaccount and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated, without regard to fiscal years, for state grants to small communities for construction of treatment works eligible for assistance under Title VI of the federal act.

(b) The board may enter into grant contracts in accordance with this section with small communities authorized to construct, operate, and maintain treatment works to aid in the construction of eligible projects.

(c) The board may make grants to small communities in an amount on a sliding scale, based on a community's ability to pay, not to exceed 97½ percent of the total estimated cost of pollution studies, project development, planning, design, and construction determined in accordance with applicable state laws and regulations. Total state assistance under this section shall not exceed three million

five hundred thousand dollars ($3,500,000) for any single eligible project.

(d) Any grant contract entered into pursuant to this section may include provisions as may be determined by the board and shall include both of the following provisions:

(1) An estimate of the reasonable cost of the eligible project.

(2) An agreement by the small community to proceed expeditiously with, and complete, the proposed eligible project, to commence operation of the treatment works upon completion, and to properly operate and maintain the works in accordance with applicable provisions of law.

(e) Small communities eligible for a state grant may also apply for a loan from the State Water Pollution Control Revolving Fund for costs not covered by the grant.

(f) For the administration of this section, the board shall not expend more than 5 percent of the bond funds authorized to be deposited in the Clean Water Subaccount. Funds for this purpose shall be appropriated by the Legislature in the Budget Act.

(g) The board may adopt rules, regulations, and guidelines necessary or appropriate to carry out this section.

15214. (a) The sum of twenty million dollars ($20,000,000) is hereby transferred from the account to the Groundwater Treatment Subaccount and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated, without regard to fiscal years, for expenditure for loans to agencies to aid in the construction of groundwater treatment facilities and for the other purposes set forth in this section.

The board may loan an agency up to 100 percent of the total eligible costs of design and construction of a project.

Loans may not be made sooner than 30 days after notification, in writing, of the necessity therefor to the chairperson of the committee in each house which considers appropriations, to the policy committee of the Assembly as designated by the Speaker of the Assembly and the policy committee of the Senate as designated by the Senate Committee on Rules, and to the Chairperson of the Joint Legislative Budget Committee.

(b) The board may enter into contracts and may adopt rules and regulations necessary to carry out the purposes of this section.

(c) For the purpose of administering this section, the board may expend not more than 5 percent of the bond funds authorized to be deposited in the Groundwater Treatment Subaccount.

(d) The board may expend, up to 1 percent of the bond funds authorized for the purpose of this section, for studies, research, public information, plans, or surveys necessary to carry out the purposes of this section.

(e) Any contract for a loan entered into pursuant to this section shall include, but not be limited to, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the agency to proceed expeditiously with,

and complete, the project; to commence operation of the project upon completion and to properly operate and maintain the project in accordance with applicable provisions of law; to provide for the payment of the agency's share of the cost of the project, including the principal of, and the interest on, any state loan made pursuant to this section; and, if appropriate, to apply for, and make reasonable efforts to secure, federal assistance for the project.

(f) All loans made pursuant to this section are subject to all of the following provisions:

(1) An agency seeking a loan shall demonstrate, to the satisfaction of the board, that an adequate opportunity for public participation regarding the loan has been provided.

(2) Any election held with respect to the loan shall include the entire area of the agency, except that, if the agency proposes to accept the loan on behalf of a specified area of the agency, the election shall be held only in that area of the agency.

(3) Loan contracts may not provide a moratorium on the payment of principal or interest.

(4) Loans shall be for a period of up to 20 years. The interest rate for the loans shall be set at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of general obligation bonds, with that rate to be computed according to the true interest cost method. If the interest rate determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent The interest rate set for each contract shall be applied throughout the contract's repayment period. There shall be a level annual repayment of principal and interest on the loans.

(5) The board, in considering projects, shall give preference to projects which treat groundwater that has been contaminated or polluted by agricultural drainage waters.

(6) The board shall not loan more than ten million dollars ($10,000,000) for a single project.

(g) The board may make loans to agencies, at the interest rates authorized under this section and under terms and conditions that may be determined necessary by the board, for the purposes of financing feasibility studies of projects potentially eligible for funding under this section. No single potential project shall be eligible to receive more than one hundred thousand dollars ($100,000), and not more than 3 percent of the bond funds authorized for purposes of this section may be expended for these studies. A loan for a feasibility study shall not decrease the maximum amount of any other loan which may be made under this section.

15215. (a) The sum of twenty million dollars ($20,000,000) is hereby transferred from the account to the Water Conservation and Groundwater Recharge Subaccount and shall be available for appropriation by the Legislature for loans to agencies to aid in the acquisition and construction of voluntary, cost-effective capital outlay water conservation programs and groundwater recharge

facilities.

(b) The department shall not loan more than five million dollars ($5,000,000) for a single project.

(c) The department shall establish priorities for loans for voluntary, cost-effective capital outlay water conservation programs on the basis of their economic, social, and environmental impacts. In establishing priorities, particular emphasis shall be given to net water savings, engineering feasibility, and to meeting financial and economic needs.

(d) The department shall establish priorities for loans for groundwater recharge facilities for projects in overdrafted groundwater basins on the basis of economic, social, and environmental impacts. In establishing priorities, particular emphasis shall be given to reducing groundwater overdraft, engineering and hydrogeologic feasibility, and to meeting financial and economic needs.

(e) The department may make loans to agencies, at the interest rates pursuant to this section and under terms and conditions that may be determined necessary by the department, for the purposes of financing feasibility studies of projects potentially eligible for funding pursuant to this section. No single potential project shall be eligible to receive more than one hundred thousand dollars ($100,000), and not more than 6 percent of the total amount of bonds authorized to be expended for the purposes of this section may be expended for these studies.

(f) For the purpose of administering this section, the total expenditures of the department may not exceed 5 percent of the bond funds authorized to be deposited in the Water Conservation and Groundwater Recharge Subaccount. The department shall establish a reasonable schedule of administrative fees for loans, which fees shall be paid by the agency pursuant to subdivision (g) to reimburse the state for the costs of administering this section.

(g) Any contract entered into pursuant to this section shall include, but not be limited to, all of the following provisions:

(1) A finding by the department that the agency has the ability to repay the loan, that the project is economically justified, and that the project is feasible from an engineering and geologic standpoint.

(2) An estimate of the reasonable cost and benefit of the project.

(3) An agreement by the agency to proceed expeditiously with, and complete, the project.

(4) A provision that there shall be no moratorium or deferment on payments of principal or interest.

(5) An agency seeking a loan shall demonstrate, to the satisfaction of the department, that an adequate opportunity for public participation regarding the loan has been provided.

(6) Any election held with respect to the loan shall be held in the entire area of the agency, except that, if the agency proposes to accept the loan on behalf of a specified area of the agency, the election shall be held only in that area of the agency.

(7) Annual principal and interest payments shall commence not later than one year after completion of the project, and all projects shall be fully amortized not later than 20 years after completion of the project.

(8) The agency shall establish a dedicated source of revenue for repayment of the loan.

(9) Any loans made pursuant to this section may be for a period of up to 20 years, or the useful life of the project, whichever is less. The interest rate for loans made for projects to be funded under this section shall be set at a rate equal to 50 percent of the average interest rate, computed by the true interest cost method, on state general obligation bond issues of the prior calendar year. If the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent. All loans made pursuant to this section shall carry the interest rate established for the calendar year in which the funds are committed to the loan, as of the date of the letter of commitment. The interest rate set for each contract applies throughout the repayment period of the contract. There shall be a level annual repayment of principal and interest on the loans. The amount of the principal shall include the administrative fee specified in subdivision (f). Interest on the loan shall not be deferred.

(h) All loans made pursuant to this section requires the approval of the Legislature by statute.

(i) Applications for loans or financial participation by the state under this section shall be submitted to the department in the form, and with the supporting material, as prescribed by the department.

(j) As appropriated annually by the Legislature in the Budget Act, the department, notwithstanding subdivision (f), may expend money repaid to the state, pursuant to any contract executed pursuant to this section, as necessary for the administration of contracts entered into by the department pursuant to this section. However, the expenditures may not, in any year, exceed 1.5 percent of the amount repaid to the state in that year. Charges incurred by the Attorney General in protecting the state's interests in the use and repayment of funds pursuant to this section may be paid by the department from funds repaid to the state. However, these charges may not exceed 0.5 percent of the amount repaid to the state in that year. Any of the above amounts appropriated by the Legislature in the Budget Act, but unencumbered at the end of any year, shall automatically revert to the General Fund.

(k) Notwithstanding any other provision of law, the proceeds of any bonds authorized to be issued under the Water Conservation and Water Quality Bond Law of 1986 (Chapter 6.1 (commencing with Section 13450) of Division 7) for deposit in the Water Conservation and Groundwater Recharge Account in the 1986 Water Conservation and Water Quality Bond Fund, and the proceeds of any bonds authorized to be issued under the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of

Division 6) for deposit in the Water Conservation and Groundwater Recharge Account established in the 1988 Water Conservation Fund, which are unobligated on November 6, 1990, shall be available for loans to applicants in accordance with the terms and conditions set forth in this section.

(*l*) The department may adopt rules and regulations necessary to carry out the purposes of this section. Existing rules and regulations adopted by the department pursuant to Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 and Chapter 6.1 (commencing with Section 13450) of Division 7, not inconsistent with this section in effect on November 6, 1990, may be utilized by the department for purposes of implementing this section.

15216. Charges incurred by the Attorney General, in protecting the interests of the state in the use and repayment of funds under this chapter, shall be paid from the proceeds of bonds authorized to be issued for purposes of this chapter. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as a program expenses, not to exceed 1.5 percent of the bond funds authorized to be deposited in the Water Quality and Water Conservation Account.

15217. Money deposited in the Water Quality and Water Conservation Account pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds authorized by this division of purposes of this chapter shall be available for transfer to the General Fund as a reimbursement for payment of bond principal and interest.

15218. The Legislature may amend this chapter by either of the following methods:

(a) By statute, passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with the purposes of this chapter.

(b) By a statute that becomes effective only when approved by the voters.

CHAPTER 6. FISCAL PROVISIONS

15250. The proceeds of bonds issued and sold pursuant to this division shall be deposited in the State Treasury to the credit of the Water Resources Bond Fund, which is hereby created.

15251. Bonds in the total amount of three hundred eighty million dollars ($380,000,000), exclusive of refunding bonds, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this division and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual

payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

15252. The bonds authorized by this division shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this division and are hereby incorporated in this division as though set forth in full in this division.

15253. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this division, the Water Resources Finance Committee is hereby created. For purposes of this division, the Water Resources Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Governor, the Treasurer, the Controller, the Director of Finance, the Director of Water Resources, the Executive Director of the State Water Resources Control Board, and the State Director of Health Services, or their designated representatives. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law:

(1) The Department of Water Resources is designated the "board" for purposes of Chapter 2 (commencing with Section 15050), Chapter 3 (commencing with Section 15100), and Chapter 4 (commencing with Section 15125).

(2) The State Water Resources Control Board is designated the "board" for purposes of Chapter 5 (commencing with Section 15200).

15254. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this division in order to carry out the actions specified in Sections 15061, 15065, 15067, 15102, 15151, 15170, 15211, 15212, 15213, 15214, and 15215 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

15255. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

15256. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this division, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and

interest on, bonds issued and sold pursuant to this division, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 15257, appropriated without regard to fiscal years.

15257. For the purposes of carrying out this division, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this division. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this division.

15258. All money deposited in the fund which is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

15259. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in accordance with Section 16312 of the Government Code for the purposes of carrying out the chapter for which it is designated as the board pursuant to subdivision (b) of Section 15253. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out that division.

The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this division.

15260. Notwithstanding any other provision of this division or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this division that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and the use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

15261. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds shall include the approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

15262. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this division are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Section 12879.4 of the Water Code is amended to read:

12879.4. (a) The department may make loans to local agencies, upon approval of the Legislature by statute, to aid in the construction of eligible projects and to aid in the funding of voluntary, cost-effective capital outlay water conservation programs and groundwater recharge facilities, and may adopt rules and regulations necessary to carry out this chapter.

Notwithstanding any provision of law, existing rules and regulations adopted by the department pursuant to Chapter 5 (commencing with Section 12880) and Chapter 6.1 (commencing with Section 13450) that are in effect on the effective date of this chapter may be utilized to carry out this chapter. The department may subsequently revise those 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 as necessary to carry out this chapter.

(b) For the purpose of administering this chapter, the total expenditures of the department through the making of any loans may not exceed 5 percent of the total amount of the bonds authorized to be issued under this chapter. For the purpose of administering individual loans to public agencies, the department shall establish a reasonable schedule of administrative fees for loans, which fees shall be paid by the local agency pursuant to subdivision (c) to reimburse the department for its actual and necessary costs for administration of those loans. Administrative fees shall not be imposed for any other purpose.

Charges incurred by the Attorney General in protecting the interests of the state in the use and repayment of funds under this chapter shall be paid from the proceeds of bonds authorized to be issued under this chapter. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as a program expense, not to exceed 1.5 percent of the total amount of the bonds authorized to be issued under this chapter.

(c) Any contract entered into pursuant to this section may include such provisions as may be determined by the department, provided that any contract concerning an eligible project shall include, in substance, all of the following provisions:

(1) A finding by the department that the local agency has the ability to repay the loan, that the eligible project is economically justified, and that the eligible project is feasible from an engineering and geologic standpoint.

(2) An estimate of the reasonable cost and benefit of the eligible project, program, or facility.

(3) An agreement by the local agency to proceed expeditiously

with, and complete, the eligible project.

(4) A provision that there shall be no moratorium or deferment on payments of principal or interest.

(5) Local agencies seeking a loan shall demonstrate, to the satisfaction of the department, that an adequate opportunity for public participation regarding the loan has been provided.

(6) Any election held with respect to the loan shall include the entire local agency except where the agency proposes to accept the loan on behalf of a specified portion, or portions, of the agency, in which case the election shall be held in that portion or portions of the agency only.

(7) Annual principal and interest payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than 50 years after project completion.

(8) The recipient of a loan shall establish a dedicated source of revenue for repayment of the loan.

(9) Any loans made pursuant to this chapter may be for a period of up to 20 years. The interest rate for the loans made for projects to be funded pursuant to Section 12879.5 shall be set at a rate equal to the interest rate paid by the state on the most recent sale of state general obligation bonds, with that rate to be computed according to the true interest cost method. The interest rate for loans made for projects to be funded pursuant to Section 12879.6 shall be set at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, with that rate to be computed according to the true interest cost method. When the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent. The interest rate set for each contract shall be applied throughout the repayment period of the contract. There shall be a level annual repayment of principal and interest on the loans. The amount of the principal shall include the administrative fee described in subdivision (b).

(d) All loans made pursuant to this chapter shall be subject to the approval of the Legislature by statute.

(e) Applications for loans or financial participation by the state under this chapter shall be made to the department in the form and with the supporting material as may be prescribed by the department.

(f) All money repaid to the state pursuant to any contract executed under this chapter, or under Section 13999.11, shall be deposited in the General Fund as reimbursement for payment of principal and interest on bonds authorized to be issued under this chapter or Chapter 15 (commencing with Section 13999) that have been paid from the General Fund.

(g) As approved annually by the Legislature in the Budget Act, the department, notwithstanding subdivision (b), may expend money repaid to the state pursuant to any contract executed pursuant to this chapter as necessary for the administration of

contracts entered into by the department pursuant to this chapter. However, the expenditures may not in any year exceed 1.5 percent of the amount repaid to the state in that year. Charges incurred by the Attorney General in protecting the state's interests in the use and repayment of funds pursuant to this chapter may be paid by the department from these funds. However, the charges may not exceed 0.5 percent of the amount repaid to the state in that year. Any of the foregoing sums approved by the Legislature in the Budget Act but unencumbered at the end of any year shall automatically revert to the General Fund.

SEC. 3. Section 13867 of the Water Code is amended to read:

13867. The department shall require the payment of interest on each loan that has been made pursuant to this chapter at a rate that is 50 percent of the average interest rate, computed by the true interest cost method, paid by the state on general obligation bonds sold pursuant to this chapter up to November 7, 1990. The interest rate established by the amendment of this section at the 1989–90 Regular Session of the Legislature shall be applied retroactively for the full term of all loans issued under this chapter from the date of issuance.

SEC. 4. Sections 1, 2, and 3 of this act shall take effect upon the adoption by the voters of the Water Resources Bond Act of 1990, as set forth in Section 1 of this act, the amendment to the Water Conservation Bond Law of 1988, as set forth in Section 2 of this act, and the amendment to the California Safe Drinking Water Bond Law of 1976, as set forth in Section 3 of this act.

SEC. 5. (a) Notwithstanding Sections 3525, 3528, 3529, 3560, 3578, and 10218 of the Elections Code or any other provisions of law, Sections 1 to 3, inclusive, of this act shall be submitted to the voters at the November 6, 1990, general election.

(b) The Secretary of State shall ensure the placement of Sections 1 to 3, inclusive, of this act on the November 6, 1990, general election ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for Sections 1 to 3, inclusive, of this act within two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act with related statutory provisions contained in Sections 1 to 3, inclusive, of this act, within five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding Sections 1 to 3, inclusive, of this act.

If that inclusion is not possible, the Secretary of State shall publish

a supplemental ballot pamphlet regarding Sections 1 to 3, inclusive, of this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

SEC. 6. Notwithstanding any other provision of law, all ballots of the election shall be printed thereon and in a square thereof, the words: "Water Resources Bond Act of 1990," and in the same square under those words the following in 8-point type: "This act provides for a bond issue of three hundred eighty million dollars ($380,000,000) to provide funds for a water resources program and makes changes in the Water Conservation Bond Law of 1988 relating to administrative fees and the California Safe Drinking Water Bond Law of 1976 relating to loans." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Water Resources Bond Act of 1990, and amendments to existing related bond acts, be included on the November 6, 1990, general election ballot, it is necessary that this act take effect immediately.

CHAPTER 920

An act to add Chapter 1.692 (commencing with Section 5096.300) to Division 5 of the Public Resources Code, relating to financing of a program of acquiring, developing, rehabilitating, or restoring real property for wildlife, state and local park, beach, recreation, coastal greenbelt, wildland fire protection, museum, or zoo purposes by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State September 14, 1990]

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

SECTION 1. Chapter 1.692 (commencing with Section 5096.300) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.692. CALIFORNIA PARK, RECREATION, AND WILDLIFE ENHANCEMENT ACT OF 1990

Article 1. General Provisions

5096.300. This chapter shall be known and may be cited as the California Park, Recreation, and Wildlife Enhancement Act of 1990.

5096.301. The Legislature hereby finds and declares all of the following:

(a) It is the responsibility of the state to provide and to assist in the provision of better park, recreation, and museum opportunities and facilities for all citizens of California, and to provide for the preservation of historic, natural, and cultural resources.

(b) It is the policy of the state to preserve, protect, and, where possible, restore coastal resources which are of significant recreational or environmental importance and, through proper planning and development, to make them available for the enjoyment of present and future generations of persons of all income levels, all ages, and all social groups.

(c) When there is proper planning and development, parks, beaches, recreation areas and recreational facilities, museums, and preservation of archaeological and historic sites and structures and natural and cultural resources contribute not only to a healthy physical and moral environment, but also contribute to the economic betterment of the state, and, therefore, it is in the public interest for the state to acquire, develop, and restore areas for recreation, conservation, or preservation and to aid local governments of the state in acquiring, developing, or restoring those areas as will contribute to the realization of the policy declared in this chapter.

5096.302. The Legislature further finds and declares all of the following:

(a) The demand for parks, beaches, recreation and coastal areas and recreational facilities, museums, and historical resource preservation and natural and cultural resource projects in California is far greater than what is presently available, with the number of people who cannot be accommodated at the area of their choice or any comparable area increasing rapidly. Furthermore, the development of parks, beaches, recreation and coastal areas and recreational facilities, museums, and historical resource preservation and natural and cultural resource projects has not proceeded rapidly enough to provide for their full utilization by the public.

(b) The demand for parks, beaches, recreation and coastal areas and recreational facilities, museums, and historical resource preservation and natural and cultural resource projects in the urban

areas of our state is even greater since over 90 percent of the present population of California reside in urban areas; there continues to be a serious deficiency in open space and recreation areas in the metropolitan areas of the state; and less urban land is available, costs are escalating, and competition for land is increasing.

(c) There is a high concentration of urban social problems in California's major metropolitan areas which can be partially alleviated by increased recreational opportunities.

(d) There is a particularly high demand for water oriented recreational use at rivers, reservoirs, and lakes within the state park system, and recreational facilities at nonstate water facilities are particularly in need of expansion, rehabilitation, or restoration.

(e) Californians have expressed a high priority for increased provision of all of the following:

(1) Protection of wildlife and environmental areas.

(2) Developed campgrounds.

(3) Museums, historic and archaeological sites, zoos, and aquariums.

(4) Recreational trails.

(5) Recreational facilities that are accessible to the handicapped.

(6) Informal play and picnic areas.

(f) California's coast provides a great variety of recreational opportunities not found at inland sites and is heavily used because the state's major urban areas lie, and 85 percent of the state's population lives, within 30 miles of the Pacific Ocean. A shortage of facilities for almost every popular coastal recreational activity exists, and there will be a continuing high demand for popular coastal activities such as fishing, swimming, sightseeing, general beach use, camping, and day use.

(g) Cities, counties, and districts have to exercise constant vigilance to see that the parks, beaches, recreation areas and recreational facilities, schoolsites used for recreational purposes, and historical resources they now have are not lost to other uses. They should acquire additional lands as those lands become available, should take steps to improve the facilities they now have, and should adequately operate and maintain their existing and proposed systems for the enjoyment of present and future generations of persons of all income levels, all ages, and all social groups.

(h) Past and current funding programs have not and cannot meet present deficiencies. This condition has become more acute as a result of restrictions on local governmental revenues. There is a need to give priority to further recreational development that can serve expanding recreational needs, produce operating revenues, and, in some cases, stimulate private sector jobs. In view of the present revenue shortages, and the increasing recreational demands, that priority is most important at this time.

(i) There is a need for additional wildland fire protection to protect the varied natural resources in the state.

(j) In view of the foregoing, the Legislature declares that an

aggressive, coordinated, funded program for meeting existing and projected recreational demands has to be implemented without delay.

5096.303. The Legislature further finds and declares all of the following:

(a) The Lake Tahoe region contains unique and irreplaceable resources of state and national significance which, by virtue of the special conditions and circumstances of the region's natural ecology, developmental pattern, population distribution, and human needs, are seriously threatened with rapid deterioration or degeneration which endangers the natural beauty, water quality, public recreational opportunities, and economic health and productivity of the region.

(b) Past and current funding programs are insufficient to address the resource protection and public use needs in the Lake Tahoe region.

(c) In view of the foregoing, the Legislature declares that a coordinated and funded program be implemented to address Lake Tahoe region problems without delay.

5096.304. As used in this chapter, the following terms have the following meanings:

(a) "Coastal resources" means those land and water areas within the coastal zone, as defined in subdivisions (a) and (b) of Section 31006, and within the Santa Monica Mountains Zone, as described in Section 33105, which are suitable for public park, beach, or recreational purposes, including, but not limited to, areas of historical significance and areas of open space that complement park, beach, or recreational areas, or which are suitable for the preservation of coastal resource values.

(b) "Committee" means the Park, Recreation, and Wildlife Enhancement Program Finance Committee created pursuant to Section 5096.352.

(c) (1) "District" means any regional park district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 and any recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780). With respect to any area which is not included within a regional park district or a recreation and park district and in which no city or county provides parks or recreational areas or facilities, "district" also means any other district which is authorized by statute to operate and manage parks or recreational areas or facilities, employs a full-time park and recreation employee responsible for directing recreation activities and park operations for the district, offers year-round park and recreation services on lands and facilities owned by the district, and allocates a substantial portion of its annual operating budget to parks or recreation areas or facilities.

A county service area which is formed for the specific purpose of providing park and recreation services or which meets the conditions in this subdivision is a district for purposes of paragraph

(1) of subdivision (a) of Section 5096.310.

(2) A district which does not meet the definition of paragraph (1) is eligible to apply for funds specified in paragraph (4) of subdivision (a) of Section 5096.310 if the district is authorized by statute to operate and manage parks or recreational areas or facilities, employs a full-time park and recreation employee responsible for directing recreation activities and park operation for the district, offers year-round park and recreation services on lands and facilities owned by the district, and allocates a substantial portion of its annual operating budget to parks or recreation areas or facilities.

(3) A joint powers entity which is formed for the purpose of planning, acquiring, improving, operating, and maintaining open space and park land, with the approval of a member agency, may apply on behalf of that member agency for funds specified in subdivision (a) of Section 5096.310 and may expend those funds.

(d) "Fund" means the Park, Recreation, and Wildlife Enhancement Bond Fund of 1990 created pursuant to Section 5096.310.

(e) "Historical resource" includes, but is not limited to, any building, structure, site, area, or place which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.

(f) "Historical resource preservation project" is a facility or project designed to preserve an historical resource which is either listed, or determined eligible for listing, in the National Register of Historic Places, or is registered as either a state historical landmark or point of historical interest pursuant to Section 5021 and which meets National Register criteria.

(g) "Inland resources" means those land and water areas not included in the definition of coastal resources.

(h) "Lake Tahoe region" means the area described in Section 66905.5 of the Government Code.

(i) "Museum" means an organized and permanent nonprofit institution, essentially educational or aesthetic in purpose, with professional staff, which utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule.

(j) "Nonprofit organization" means any charitable organization described in Section 501(c) of the federal Internal Revenue Code.

(k) "Program" means the Park, Recreation, and Wildlife Enhancement, Acquisition, and Development Program of 1990 which is established by this chapter.

(*l*) "Regional entity" means an organization formed by a joint powers agreement by a majority of the counties and cities within one or more littoral cells which has, as its primary goal, the protection, preservation, and restoration of the shoreline.

(m) "Sacramento-San Joaquin Delta" means those land and water areas defined in Section 12200 of the Water Code.

(n) "Stewardship" means projects for the protection,

rehabilitation, restoration, and enhancement of cultural resources, basic natural systems, and outstanding scenic features of the state park system. It does not mean the maintenance, alteration, or provision of mitigation of facilities, developments, or of any physical installations whose original purpose was not the protection of the cultural, natural, and scenic resources.

(o) "State museum" means an existing museum which is owned and operated by the State of California.

(p) "Urban corridor greenbelt" means a landscaped strip of land, of at least one mile in length, which is located in a primarily residential and urbanized area. Existing streets may intersect an urban corridor greenbelt.

5096.305. As used in this chapter, and for purposes of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), "state grant" or "state grant moneys" means moneys received by the state from the sale of bonds authorized by this chapter which are available for grants to counties, cities, districts, and nonprofit organizations.

Article 2. Park, Recreation, and Wildlife Enhancement, Acquisition, and Development Program of 1990

5096.310. The proceeds of the bonds issued and sold pursuant to this chapter shall be deposited in the Park, Recreation, and Wildlife Enhancement Bond Fund of 1990, which is hereby created. All money deposited in the fund is available for appropriation in the manner set forth in Section 5096.311 or 5096.312, as the case may be, for the purposes set forth below in amounts not to exceed the following:

(a) For local assistance grants and related state administrative costs, in accordance with the following schedule: $182,000,000

Schedule:

(1) Seventy million dollars ($70,000,000) for allocation to counties, cities, and districts on the basis of population.

(2) Twenty million dollars ($20,000,000) for allocation pursuant to the Roberti-Z'berg-Harris Urban Open-Space and Recreation Program Act (Chapter 3.2 (commencing with Section 5620)).

(3) Eight million dollars ($8,000,000) for historical resource preservation projects.

(4) Twenty-seven million dollars ($27,000,000) for hiking, bicycling, jogging, and equestrian trails, and urban corridor greenbelts.

(5) Seventeen million dollars ($17,000,000) for co-

operative museum projects and for zoos and aquariums.

(6) Forty million dollars ($40,000,000) for urban river and waterfront parks.

(b) For the acquisition, development, rehabilitation, and restoration of real property for the state park system, in accordance with the following schedule: $108,000,000

Schedule:

(1) Twenty-five million ($25,000,000) dollars for the acquisition of real property.

(2) Eighty-three million dollars ($83,000,000) for the development, rehabilitation, or restoration of real property, including planning and implementation, in accordance with the following schedule:

(A) Twenty-seven million dollars ($27,000,000) for coastal resources.

(B) Twenty-five million dollars ($25,000,000) for inland resources and for lakes, reservoirs, and waterways.

(C) One million dollars ($1,000,000) for interpretive facilities for volunteer programs.

(D) Eight million dollars ($8,000,000) for historical resources.

(E) Two million dollars ($2,000,000) for trails.

(F) Seven million dollars ($7,000,000) for stewardship projects and restoration and rehabilitation necessitated by natural disasters.

(G) Thirteen million dollars ($13,000,000) for state museums and interpretive facilities.

(c) For the acquisition and development of winter recreation facilities by the Department of Parks and Recreation pursuant to the SNO-PARK program (Chapter 1.27 (commencing with Section 5091.01)) $1,000,000

(d) For the acquisition, development, enhancement, restoration, protection, or rehabilitation of real property benefiting fish and wildlife by the Wildlife Conservation Board $27,000,000

(e) For the acquisition, development, enhancement, and restoration of real property in the Lake Tahoe region by the California Tahoe Conservancy $11,000,000

(f) For acquisition, development, enhancement, and restoration in accordance with Division 21 (commencing with Section 31000), by the State Coastal Conservancy $15,000,000

(g) For the acquisition, development, and enhancement of land by the Santa Monica Mountains Con-

servancy $10,000,000
(h) For grants to local public agencies and nonprofit organizations by the Department of Water Resources for urban stream restoration projects..... $2,000,000
(i) For shoreline stabilization projects, for the development of nonmotorized recreational boating access facilities, and for loans for marinas by the Department of Boating and Waterways $6,000,000
(j) For the development or rehabilitation of park and other visitor serving facilities in Capitol Park by the Department of General Services $1,000,000
(k) For the development, rehabilitation, or restoration of facilities at metropolitan museums $18,000,000
(*l*) For acquiring land for, developing, and equipping a Lake Tahoe research and public education center by public institutions of higher learning in California, and for planning and administrative costs incurred in connection therewith $5,000,000
(m) For the acquisition, development, restoration, and enhancement of land by the Department of Forestry and Fire Protection $6,000,000
(n) For site acquisition, facilities rehabilitation, and capital improvement by the Department of Forestry and Fire Protection $25,000,000
(o) Unallocated Account $20,000,000

5096.311. (a) Proposed appropriations for the program shall be included in a section in the Budget Bill for consideration by the Legislature and shall bear the caption "Park, Recreation, and Wildlife Enhancement Acquisition and Development Program of 1990." The section shall contain separate items for each project, each class of projects, or each element of the program for which an appropriation is made.

(b) All of the funds allocated pursuant to paragraphs (1) and (2) of subdivision (a) of Section 5096.310 shall be available for appropriation in the Budget Act for the 1991–92 fiscal year. The amounts allocated pursuant to paragraphs (3) to (6), inclusive, of subdivision (a) of Section 5096.310 shall be available for appropriation in the Budget Bill for the 1992–93 fiscal year.

(c) All appropriations shall be subject to all limitations enacted in the Budget Act and to all fiscal procedures prescribed by law with respect to the expenditure of state funds, unless expressly exempted from those laws by a statute enacted by the Legislature. Those sections shall contain proposed appropriations only for the program elements and classes of projects contemplated by this chapter, and no funds derived from the bonds authorized by this chapter may be expended pursuant to an appropriation not contained in those sections of the Budget Act.

5096.312. (a) Commencing with the Budget Bill for the 1999–

2000 fiscal year, the balances remaining in the fund may be appropriated by the Legislature for expenditure, without regard to the maximum amounts allocated to each element of the program, for any element of the program specified in Section 5096.310, or any class of projects within those elements, that the Legislature deems to be of the highest priority.

(b) Notwithstanding subdivision (a), commencing with the Budget Act for the 1997–98 fiscal year, any balances remaining in the fund and available to the Wildlife Conservation Board for the program specified in subdivision (d) of Section 5096.310, but not then appropriated, shall be transferred to the Wildlife Restoration Fund and shall be available for appropriation to the board, without regard to the maximum amounts allocated to each element of the program, for any element of the program specified in subdivision (d) of Section 5096.310.

Article 3. Local Assistance Grants

5096.320. (a) The state grant moneys authorized by paragraph (1) of subdivision (a) of Section 5096.310 shall be allocated to counties, cities, and districts on the basis of their populations, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data and other population data as the Department of Parks and Recreation may require to be furnished by any county, city, or district.

(b) Forty percent of the total funds available for grants shall be allocated to counties and regional park, open-space, or park and open-space districts formed pursuant to Chapter 3 (commencing with Section 5500) on or before April 30, 1991. Each county's allocation shall be in the same ratio as the county's population is to the state's total population, except that each county is entitled to a minimum allocation of one hundred fifty thousand dollars ($150,000). In any county that embraces all or part of the territory of a regional park, open-space, or park and open-space district whose board of directors is not the county board of supervisors, the amount allocated to the county shall be apportioned between the county and the regional district in proportion to the population of the county that is included within the territory of the regional district and the population of the county that is outside the territory of the regional district.

For purposes of this subdivision, the City and County of San Francisco is a county.

(c) (1) Sixty percent of the total funds available for grants shall be allocated to cities and districts, other than regional park, open-space, or park and open-space districts. Each city's and each district's allocation shall be in the same ratio as the city's or district's population is to the combined total of the state's population that is included in incorporated areas and in unincorporated areas within

the districts, except that each city or district is entitled to a minimum allocation of thirty thousand dollars ($30,000). In any instance in which the boundary of a city overlaps the boundary of a district, the population in the area of overlapping jurisdiction shall be attributed to each jurisdiction in proportion to the extent to which each operates and manages parks and recreational areas and facilities for that population. In any instance in which the boundary of a city overlaps the boundary of a district, and in the area of overlap the city does not operate and manage park and recreation areas and facilities, all grant funds shall be allocated to the district.

(2) Each city and other district whose boundaries overlap, shall develop a specific plan for allocating the grant funds in accordance with the formula specified in paragraph (1). If, by March 1, 1991, the plan has not been agreed to by the affected jurisdictions and submitted to the Department of Parks and Recreation, the department shall determine the allocation of the grant funds among the affected jurisdictions.

(3) For purposes of this subdivision, the City and County of San Francisco is a city.

5096.321. The state grant moneys authorized in paragraph (1) of subdivision (a) of Section 5096.310 may be expended by the recipient for any of the following purposes, or any combination thereof:

(a) The development, rehabilitation, improvement, or restoration of all of the following:

(1) Deteriorated roads, utilities, and other structures and facilities within existing parks and recreational areas.

(2) Neighborhood, community, and regional parks.

(3) Beaches and public accessways to beaches.

(4) Historical or archaeological sites and historic structures.

(5) Recreational areas and facilities.

(6) Hiking, bicycling, jogging, and equestrian trails.

(7) Museums.

(8) Campgrounds.

(9) Lakes, reservoirs, waterways, and aquatic parks.

(b) The procurement of development rights and scenic easements in connection with any acquisition made for any purpose specified in paragraphs (2) to (6), inclusive, of subdivision (a), as long as the right or easement directly enhances the enjoyment or usefulness of the acquisition.

(c) The acquisition of land for park, open space, beach, recreational, or historical preservation purposes.

5096.323. Funds authorized for local assistance grants, for the Roberti-Z'berg-Harris Urban Open-Space and Recreation Program Act (Chapter 3.2 (commencing with Section 5620)), pursuant to paragraph (2) of subdivision (a) of Section 5096.310 may be expended, notwithstanding Section 5627, only for the acquisition, development, rehabilitation, or restoration of parks, beaches, open-space lands, recreational trails, or recreational facilities and areas, and for the development rights or scenic easements in

connection with those acquisitions.

5096.324. Funds authorized in paragraph (3) of subdivision (a) of Section 5096.310 shall be administered by the State Office of Historic Preservation and shall be available as grants on a competitive basis to cities, counties, districts, and nonprofit organizations for the acquisition, development, rehabilitation, or restoration of historical resources and for historical resource preservation projects. The maximum amount of each grant shall not exceed one million dollars ($1,000,000). An individual jurisdiction may enter into an agreement with a nonprofit organization for the purpose of carrying out a grant, subject to the requirements of subdivision (d) of Section 5096.333. Notwithstanding Section 5096.337, an amount not to exceed 5 percent of the allocation made by paragraph (3) of subdivision (a) of Section 5096.310 may be used for actual costs incurred in connection with the administration of the historical grants. To be eligible for funding, each project shall meet the preservation standards established by the State Office of Historic Preservation for the California Park and Recreation Facilities Act of 1984 (Chapter 1.691 (commencing with Section 5096.225)) and the California Wildlife, Coastal, and Park Land Conservation Act (Division 5.8 (commencing with Section 5900)). Not less than one million dollars ($1,000,000) of the amount authorized in paragraph (3) of subdivision (a) of Section 5096.310 shall be available only for the acquisition and preservation of archaeological resources, including Native American rock art and inscriptions.

5096.325. (a) Not more than twenty million dollars ($20,000,000) of the funds authorized in paragraph (4) of subdivision (a) of Section 5096.310 shall be available, upon appropriation by the Legislature, as grants on a competitive basis to cities, counties, and districts for the acquisition and development of urban corridor greenbelts for walking, bicycling, jogging trails, and landscaped scenic areas. An eligible city, county, or district may submit an application for a grant to the Department of Parks and Recreation. The department shall evaluate the application and, after approval by the State Park and Recreation Commission, submit its recommendations to the Legislature. If the right-of-way for the proposed corridor has previously been used as a transportation corridor, the department shall request the California Transportation Commission to review and comment on the transportation impact of eliminating the availability of the land for transportation purposes. The California Transportation Commission's comments shall be incorporated into the department's recommendations to the Legislature. Funds shall be allocated to cities, counties, and districts pursuant to subsequent legislation appropriating the funds. No individual city, county, or district may receive more than 35 percent of the funds authorized by this subdivision.

(1) A recipient is not required to vacate or abandon existing streets which intersect the proposed urban corridor greenbelt, but shall agree that no new intersections will be constructed through that

urban corridor greenbelt.

(2) A recipient may convey an easement in land which underlies an urban corridor greenbelt that the recipient may possess, for either or both of the following purposes:

(A) Public transit use.

(B) Public utility use.

(3) Grants shall be made on the basis of 50 percent state funds and 50 percent local matching funds or property donated to be part of the project. The grant recipient shall certify to the Department of Parks and Recreation that there is available, or will become available prior to the commencement of any work on the project, matching funds or property in the amount required for the completion of the project from a source other than this chapter. Certification of the source and amount or value shall be set forth in the application.

(b) The remainder of the funds authorized in paragraph (4) of subdivision (a) of Section 5096.310 shall be available as grants on a competitive basis to cities, counties, districts, and nonprofit organizations for the development, improvement, or rehabilitation of hiking, bicycling, jogging, and equestrian trails recognized in a local general plan, regional plan, master plan, or state plan. Not less than two million dollars ($2,000,000) shall be allocated for the development of regional recreational trail systems, located in metropolitan areas, that are designed to serve persons throughout the entire metropolitan area and that connect parks and open space and natural, educational, historical, and cultural resources.

5096.326. Not more than five million dollars ($5,000,000) of the funds authorized in paragraph (5) of subdivision (a) of Section 5096.310 shall be available as grants on a competitive basis to cities, counties, and nonprofit organizations for the development, rehabilitation, or restoration of facilities accredited by the American Association of Zoological Parks and Aquariums and operated by cities, counties, and nonprofit organizations and to cities and counties for the development, rehabilitation, or restoration of zoos and aquariums operated by a city or county, but not accredited by the American Association of Zoological Parks and Aquariums. This program of development, rehabilitation, or restoration shall be known and may be cited as the Dr. Paul Chaffee Zoological Program. Priority in awarding grants pursuant to this subdivision shall be in accordance with the following order of preference:

(a) Facilities that have not been cited with an "Official Warning and Notification" for violations by the United States Department of Agriculture, or have been found by a court to have been in violation, within the preceding five years of provisions relating to the care, handling, or management of animals.

(b) Facilities that have been so cited for violations by the United States Department of Agriculture, or have been found by a court to have been in violation, of those provisions within the preceding five years, but do not have an alleged violation case or investigation pending against them.

(c) Facilities that are not currently in compliance with federal laws or regulations of the United States Department of Agriculture, but the grant may be expended only to correct deficiencies, for which the citation was issued, to the satisfaction of that department.

5096.328. (a) The funds authorized in paragraph (5) of subdivision (a) of Section 5096.310 and not granted for purposes of Section 5096.326 shall be available as grants on a competitive basis to cities, counties, and nonprofit organizations for the development or rehabilitation of real property consisting of cooperative museum projects.

(b) To be eligible for funding, a project shall initially be nominated by a Member of the Legislature for study by the Department of Parks and Recreation. The department shall study each project so nominated and, prior to the April 1 preceding the fiscal year for which funding is proposed to be appropriated, shall submit to the Legislature a prioritized listing and comparative evaluation of all projects nominated prior to the preceding July 1.

(c) In establishing priorities of cooperative museum projects, the department shall consider characteristics, including, but not limited to, all of the following:

(1) The project will interpret one or more important California historical, cultural, economic, or resource themes or an important historical, cultural, economic, technology, or resource theme in a major region of California. Higher priority shall be assigned to projects whose themes are not interpreted in any existing museum or have demonstrable deficiencies in their presentation in an existing museum.

(2) The project is proposed to be operated on lands that are already in public ownership or on lands that will be acquired and used for the project in conjunction with adjoining public lands.

(3) Projects which are closely related geographically to the resources, activity, structure, place, or collection of objects to be interpreted, and are close to population centers and access routes.

(4) Projects that are in, or close to, population centers or are adjacent to, or readily served by, a state highway or other mode of public transportation.

(5) Projects for which there are commitments, or the serious likelihood of commitments, of funds or the donation of land or other property suitable for the project.

(d) The Department of Parks and Recreation shall annually forward a list of the highest priority projects to the Department of Finance for inclusion in the Budget Bill.

(e) An application for a grant for a cooperative museum project shall be submitted jointly by the city, county, or nonprofit organization and another public agency, an institute of higher learning, or another nonprofit organization that cooperatively are operating, or will operate, the museum.

5096.329. (a) The funds specified in paragraph (6) of subdivision (a) of Section 5096.310 shall be available as grants on a competitive

basis to cities, counties, and districts for urban river and waterfront park projects.

(b) To be eligible for funding, a project shall initially be nominated by a Member of the Legislature for study by the Department of Parks and Recreation. The department shall study any project so nominated and, prior to each fiscal year, shall submit to the Legislature a prioritized listing and comparative evaluation of all projects nominated during the preceding year.

(c) In establishing priorities of these projects pursuant to subdivision (b), the department shall consider characteristics, including, but not limited to, all of the following:

(1) The project is a regional facility which will serve an urbanized population.

(2) The project will provide utilization of a river, major tributary to a river, or waterfront park.

(3) The project will promote the expanded use of existing recreational units.

(4) If the project is for the acquisition of land, the acquisition is necessary to ensure completion of a master, conceptual, or general plan.

5096.330. (a) After one or more public hearings, the Department of Parks and Recreation shall adopt criteria and procedures to clarify or amplify the statutory criteria for evaluating applications for competitive grants specified in paragraphs (5) and (6) of subdivision (a) of Section 5096.310. The department shall not commence the hearings sooner than 30 days following submittal to the Joint Legislative Budget Committee, the standing committees of each house of the Legislature having jurisdiction over parks and recreation, and the fiscal committees of each house. The criteria and procedures shall not become effective until approved by the Secretary of the Resources Agency.

(b) The department may, as needed, and in accordance with the procedures specified in subdivision (a), revise existing criteria and procedures for evaluating applications for competitive grants specified in paragraphs (3) and (4) of subdivision (a) of Section 5096.310. All new, revised, and existing criteria shall be broadly disseminated.

5096.331. (a) Individual applications for local assistance grants pursuant to this article shall be submitted to the Department of Parks and Recreation for approval as to conformity with the requirements of this chapter. Except for an application for a grant under paragraph (3) or (5) of subdivision (a) of Section 5096.310, the application shall be accompanied by certification from the planning agency of the applicant that the project for which the grant is applied is consistent with the park and recreation element of the applicable city or county's general plan or the district's park and recreation plan and will satisfy a high priority need. In order to utilize available grant funds as effectively as possible, overlapping or adjoining jurisdictions are encouraged to combine projects and submit a joint application.

(b) With the exception of grants provided under paragraphs (1), (2), and (4) of subdivision (a) of Section 5096.310, the minimum amount that may be applied for any individual project is twenty thousand dollars ($20,000).

(c) Every application for a grant shall comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(d) Upon completion of the review of applications submitted pursuant to subdivision (a), projects recommended for approval shall be forwarded to the Director of Finance for inclusion in the Budget Bill.

(e) Any amount granted on a competitive basis pursuant to this article shall be in addition to, and not in lieu of, any other grant to which the applicant jurisdiction may be entitled to pursuant to this chapter or other funds that may also be used for the purpose for which the grant is applied for.

5096.333. (a) No state grant moneys authorized under subdivision (a) of Section 5096.310 may be disbursed until the applicant agrees that any property acquired, developed, rehabilitated, or restored with the funds will be used by the applicant only for the purpose for which the funds were requested, and that no other use, sale, or other disposition of the property is permitted except by a specific act of the Legislature. If the use of the property is changed to one other than permitted under the paragraph of subdivision (a) of Section 5096.310 from which the funds were appropriated, or the property is sold or otherwise disposed of, an amount equal to the amount of the grant or equal to the fair market value of the real property, or portion thereof, acquired, developed, rehabilitated, or restored with the grant, whichever is greater, shall be used by the city, county, or district for a purpose authorized in that paragraph or shall be reimbursed to the fund for a use authorized in that paragraph.

(b) No state grant moneys authorized under subdivision (a) of Section 5096.310 may be disbursed unless the applicant agrees to maintain and operate the property acquired, developed, rehabilitated, or restored pursuant to this chapter for a period commensurate with the type of project and the proportion of state grant moneys and local funds allocated to the capital costs of the project.

(c) Funds appropriated for local assistance grants pursuant to subdivision (a) of Section 5096.310 shall be encumbered by the recipient within three years of the date when the appropriation becomes effective, regardless of the date when each project was recommended for approval pursuant to subdivision (d) of Section 5096.331.

(d) State grant moneys granted pursuant to subdivision (a) of Section 5096.310 may be expended for development, rehabilitation, or restoration only on lands owned by, or subject to a lease or other interest held by, the applicant. If those lands are not owned by the

applicant, the applicant shall first demonstrate to the satisfaction of the Department of Parks and Recreation that the development, rehabilitation, or restoration will provide benefits commensurate with the type and duration of interest in land held by the applicant.

5096.334. In awarding grants, the Department of Parks and Recreation shall give special consideration to projects for the modification or rehabilitation of existing real property used for park, beach, recreation, museum, and historical resource purposes, to make the property more accessible to the handicapped.

5096.335. To the greatest extent possible, grants made pursuant to paragraphs (3), (4), (5), and (6) of subdivision (a) of Section 5096.310 shall each be allocated on an equal geographic basis.

5096.336. All grant funds provided in subdivision (a) of Section 5096.310 shall be on a reimbursement basis with the local agency receiving reimbursement up to the approved grant amount upon completion of the project. The Department of Parks and Recreation may provide for reimbursement on an incremental basis.

5096.337. Actual state costs incurred in connection with administering the grant programs authorized in subdivision (a) of Section 5096.310 shall be paid from the funds authorized therefor, but not more than 1.5 percent of the total amount available pursuant to subdivision (a) of Section 5096.310 may be so used.

Article 4. State Park System

5096.340. The Legislature recognizes that public financial resources are inadequate to meet all capital outlay needs of the state park system and that many units have facilities which are over 40 years old and heavy use has deteriorated these facilities, requiring funds for rehabilitation to make these facilities available for public use. The Legislature further recognizes that the development of recently acquired units of the state park system has proceeded at a rate that has prevented their full potential for public use from being realized. Accordingly, it is declared to be the policy of the state that funds allocated pursuant to subdivision (b) of Section 5096.310 shall be appropriated primarily for projects that accomplish the following:

(a) Serve metropolitan population centers and accommodate day-use and weekend-overnight visits.

(b) Provide for the development of existing units with the minimum facilities necessary for accessibility, use, and interpretation.

(c) Rehabilitate facilities at existing units that will provide for more efficient management and reduced operational costs.

(d) Minimize dependence on motor vehicles and reduce other forms of energy and water consumption through appropriately designed facilities.

(e) Acquire those lands which will lead to the completion of ongoing projects, including those begun under the California Wildlife, Coastal, and Park Land Conservation Act of 1988

(Proposition 70) approved by the California voters at the June 7, 1988, direct primary election.

(f) Preserve examples of historical resources, natural resources, and natural landscapes that are underrepresented in the state park system.

5096.341. (a) Any Member of the Legislature, the State Park and Recreation Commission, or the California Coastal Commission or the Secretary of the Resources Agency may nominate any project to be funded under this article for study by the Department of Parks and Recreation. The State Park and Recreation Commission shall nominate projects after holding at least one public hearing to seek project proposals from individuals, citizen groups, the Department of Parks and Recreation, and other public agencies. Any of the commissions shall make nominations by a vote of its membership.

(b) The Department of Parks and Recreation shall study any nominated project. In addition to the procedures required by Section 5006, the department shall submit annually to the Legislature and to the Secretary of the Resources Agency a report consisting of a prioritized listing and comparative evaluation of all projects nominated for study, in accordance with the following schedule:

(1) March 1, 1991, for projects nominated prior to January 1, 1991.

(2) November 1, 1991, for projects nominated prior to June 30, 1991, and after January 1, 1991.

(3) November 1, 1992, and each November 1 thereafter, for projects nominated during the 12 months ending June 30, 1992, and each June 30 thereafter.

(c) Nominated projects shall be subject to the favorable recommendation of the State Park and Recreation Commission and approved by the Secretary of the Resources Agency and forwarded by the secretary to the Director of Finance for inclusion in the Budget Bill.

5096.342. In the allocation of funds pursuant to subdivision (b) of Section 5096.310, added consideration shall be given to projects in areas previously underserved by the state park system.

5096.343. Acquisition for the state park system by purchase or by eminent domain shall be made pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

5096.344. Funds allocated for acquisition for the state park system pursuant to paragraph (1) of subdivision (b) of Section 5096.310 may be expended only for acquisitions inside the boundaries of existing projects or units of the state park system, as additions to existing projects or units, and for new projects, except that not more than eleven million two hundred fifty thousand dollars ($11,250,000) shall be available for new projects and not more than six million dollars ($6,000,000) may be expended for any single project or unit.

5096.345. Funds allocated for coastal resources in subparagraph (A) of paragraph (2) of subdivision (b) of Section 5096.310 shall be allocated for the land and water areas constituting coastal resources

in a manner that will achieve the broadest geographic distribution along the coast and in the San Francisco Bay region, while considering priority of need for each project.

5096.346. Funds allocated pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 5096.310 shall be available for inland resources and lakes, reservoirs, and waterways within the state park system, including State Water Facilities, as defined in paragraphs (1) to (4), inclusive, of subdivision (d) of Section 12934 of the Water Code, within the state park system.

5096.347. Funds allocated pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 5096.310 shall be available for interpretive facilities that support volunteer community action programs for the state park system.

5096.348. (a) Priority for the expenditure of funds allocated pursuant to subparagraph (G) of paragraph (2) of subdivision (b) of Section 5096.310 shall be for the completion or expansion of interpretive facilities and state museum projects that are included in a general plan, master plan, or feasibility study for a unit of the state park system.

(b) All historic resource preservation projects for the state park system funded pursuant to subparagraph (D) of paragraph (2) of subdivision (b) of Section 5096.310 shall meet the preservation standards established by the State Office of Historic Preservation for the California Park and Recreation Facilities Act of 1984 (Chapter 1.691 (commencing with Section 5096.225)) and the California Wildlife, Coastal, and Park Land Conservation Act (Division 5.8 (commencing with Section 5900)).

5096.350. In making expenditures in the various specific allocation categories of paragraph (2) of subdivision (b) of Section 5096.310, at least five million dollars ($5,000,000) shall be spent for the development or rehabilitation of campgrounds in the state park system, including camper-serving facilities, common areas, and natural features within campgrounds.

5096.351. Funds allocated pursuant to subparagraph (E) of paragraph (2) of subdivision (b) of Section 5096.310 shall be available for the development or rehabilitation of trails within the state park system or connecting units of the state park system.

5096.352. (a) Of the amount allocated pursuant to subparagraph (F) of paragraph (2) of subdivision (b) of Section 5096.310, five million dollars ($5,000,000) shall be available for stewardship projects that provide protection of the most critical cultural natural and scenic features of the state park system and two million dollars ($2,000,000) for restoration and rehabilitation necessitated by natural disasters.

(b) The two million dollars ($2,000,000) allocated for natural disasters is continuously appropriated to the Department of Parks and Recreation for natural disaster damage sustained in a Governor declared natural disaster and shall be available for expenditure following notification and approval of projects by the Department of

Finance and following 30 days from notification in writing of the necessity therefor to the Chairperson of the Joint Legislative Budget Committee. Projects over two hundred fifty thousand dollars ($250,000) shall also require approval from the State Public Works Board.

(c) Works efforts for natural heritage stewardship purposes may include, but are not limited to, objectives such as the control of major erosion and geologic hazards, the restoration and improvement of critical plant and animal habitat, the control and elimination of exotic species encroachment, and the stabilization of coastal dunes and bluffs. Those work efforts shall not include activities which merely supplement normal state park system operations or which are usually funded from other sources.

(d) Work efforts for cultural heritage stewardship purposes may include, but are not limited to, stablization and protection of historic and archaeological resources in the state park system. Those resources may include sites, features, ruins, archaeological deposits, historic landscape resources, and rock art features making up the physical legacy of California's past. These work efforts do not include the rehabilitation, restoration, reconstruction, interpretation, or mitigation typically required as part of the facility development program.

Article 5. Miscellaneous Provisions

5096.360. Funds allocated pursuant to subdivision (d) of Section 5096.310 shall be available for expenditure by the Wildlife Conservation Board pursuant to the Wildlife Conservation Law of 1947 (Chapter 4 (commencing with Section 1300) of Division 2 of the Fish and Game Code) for the following particular purposes:

(a) Ten million dollars ($10,000,000) for the acquisition, in fee or perpetual conservation easements, enhancement, or development of habitat for wildfowl or other wildlife benefited by a marsh environment for the purpose of carrying out the Central Valley Habitat Joint Venture Component of the North American Waterfowl Management Plan. However, strong preference shall be given to projects involving acquisition of perpetual conservation easements or habitat development.

(b) Seventeen million dollars ($17,000,000) for the acquisition, enhancement, restortion, or protection of any of the following:

(1) Critical wildlife habitat.

(2) Lands or waters for the threatened, endangered, or fully protected species or indicator species for specialized habitats, including acquisition along river corridors.

(3) Real property for wildlife-oriented public use projects.

(c) Notwithstanding subdivisions (a) and (b), up to one million dollars ($1,000,000) may be allocated by the board for the construction of a center south of California along the migratory path of California bird species for the study of tropical biology, one of

whose principal purposes is the conservation of habitat critical to the preservation of migratory bird species native to California.

5096.361. Funds allocated pursuant to subdivision (e) of Section 5096.310 shall be available for the expenditure for the acquisition, development, restoration, and enhancement of real property by the California Tahoe Conservancy within the Lake Tahoe region pursuant to Title 7.42 (commencing with Section 66905) of the Government Code, and for administrative costs incurred therewith, for the following purposes:

(a) Protecting the natural environment through soil erosion control, restoration or enhancement of environmentally sensitive lands, and restoration of streams and other natural areas.

(b) Providing public access and public recreation projects.

(c) Enhancing wildlife areas.

(d) Consolidating lands for their more effective management as a unit.

5096.362. Funds allocated pursuant to subdivision (f) of Section 5096.310 shall be available for the purposes of Division 21 (commencing with Section 31000), and for administrative costs incurred in connection with these purposes.

5096.363. Funds allocated pursuant to subdivision (g) of Section 5096.310 shall be available for expenditure for acquisition, development, and enhancement of lands by the Santa Monica Mountains Conservancy and related state administrative costs, pursuant to, and consistent with the purposes of, Division 23 (commencing with Section 33000).

5096.364. Funds allocated pursuant to subdivision (h) of Section 5096.310 shall be available for grants to local public agencies and nonprofit organizations by the Department of Water Resources for the acquisition or restoration of natural lands that contain urban streams, creeks, and riparian areas; for related state administrative costs, not to exceed one hundred thousand dollars ($100,000), and for use by the Department of Water Resources to provide planning and design assistance to the local agencies and nonprofit organizations, in an amount not to exceed 10 percent of the amount available for grants in any fiscal year, in accordance with Section 7048 of the Water Code.

5096.365. (a) Funds allocated pursuant to subdivision (i) of Section 5096.310 shall be available for expenditure by the Department of Boating and Waterways for the following purposes and in the following amounts:

(1) Four million dollars ($4,000,000) for shoreline stabilization projects on publicly owned land in accordance with Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code.

(2) One million seven hundred fifty thousand dollars ($1,750,000) for loans for marinas pursuant to Section 71.4 of the Harbors and Navigation Code.

(3) Two hundred fifty thousand dollars ($250,000) for grants for

the development of waterway public access facilities used primarily by rafters, canoeists, tubers, and kayakers, in cooperation with other public agencies.

(b) When considering eligible shoreline stabilization projects under paragraph (1) of subdivision (a), nonstructural alternatives shall be given preference and structural alternatives shall only be funded if the Department of Boating and Waterways, in consultation with the California Coastal Commission and the appropriate county or city government, finds that nonstructural alternatives are not feasible.

5096.366. Funds allocated pursuant to subdivision (j) of Section 5096.310 shall be available for appropriation to the Department of General Services for the development or rehabilitation of park and other visitor serving facilities in Capitol Park, consisting of the landscaped areas bounded by L, 15th, N, and 9th streets in Sacramento. None of these funds may be expended for office space, or any other area not accessible to visitors, in any structure in Capitol Park or for exterior improvements to the State Capitol, the Jesse M. Unruh Building, or the Library and Courts Building.

5096.367. (a) Funds allocated pursuant to subdivision (k) of Section 5096.310 shall be appropriated to the Controller for disbursement , in accordance with the following schedule:

(1) Eight million dollars ($8,000,000) to the California Academy of Sciences in San Francisco.

(2) Ten million dollars ($10,000,000) to the Museum of Science and Industry in Los Angeles. Of the amount received by the Museum of Science and Industry under this section, the museum shall allocate one million five hundred thousand dollars ($1,500,000) to the California Museum of Latino History, Art, and Culture for the purposes of Chapter 8.8 (commencing with Section 8740) of Division 1 of Title 2 of the Government Code. The remaining funds shall be used by the museum only for seismic rehabilitation.

(b) Funds allocated pursuant to subdivision (m) of Section 5096.310 shall be available for expenditure by the Department of Forestry and Fire Protection for the acquisition of adjacent parcels, consisting of approximately 2,480 acres, that are necessary for the management of the Demonstration State Forest System.

(c) Funds allocated pursuant to subdivision (o) of Section 5096.310 may be expended for any purpose specified in this chapter that the Legislature determines to be of the highest priority.

5096.368. Projects authorized for the purposes set forth in subdivision (b) of Section 5096.310 are subject to augmentation, as provided in Section 16352 of the Government Code, as limited by any provision of the Budget Act. The unexpended balance in any appropriation made payable from the fund which the Director of Finance, with the approval of the State Public Works Board, determines not to be required for expenditure pursuant to the appropriation, may be transferred on order of the Director of Finance to, and in augmentation of, the appropriation made in

Section 16352 of the Government Code.

5096.369. The Department of General Services, if the Director of Parks and Recreation finds that the use would be compatible with the ultimate use of the real property as a unit, or part of a unit, of the state park system and with the sound management and conservation of resources within the unit, may make agreements with respect to any real property acquired pursuant to subdivision (b) of Section 5096.310 for the continued tenancy of the seller of the property for a period of time and under conditions that may be mutually agreed upon by the state and the seller so long as the seller promises to pay the taxes on his or her interest in the property that become due, owing, or unpaid on the interest created by the agreement, and so long as the seller conducts any operations on the land according to specifications issued by the appropriate director or officer to protect the property for the public use for which it was acquired. A copy of the agreement shall be filed with the county clerk in the county in which the property is located. The arrangement shall be compatible with the operation of the area by the state, as determined by the appropriate director or officer.

5096.370. All real property acquired pursuant to this chapter shall be acquired in compliance with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code. The Department of Parks and Recreation shall prescribe procedures sufficient to ensure compliance by local public agencies which receive funds under subdivisions (a) and (b) of Section 5096.310.

5096.371. For purposes of this chapter, acquisition may include gifts, purchases, leases, easements, the exercise of eminent domain if expressly authorized, the transfer or exchange of property for other property of like value, and purchases of development rights and other interests.

5096.372. All grants, gifts, devises, or bequests to the state, conditional or unconditional, for park, conservation, recreation, or other purposes for which real property may be acquired or developed pursuant to this chapter, may be accepted and received on behalf of the state by the appropriate departmental director with the approval of the Director of Finance. The grants, gifts, devises, or bequests shall be available, when appropriated by the Legislature, for expenditure for the purposes specified in Section 5096.310.

5096.373. Real property acquired for the state park system shall consist predominantly of open or natural lands, including lands under water capable of being utilized for multiple recreational purposes, and lands necessary for the preservation of coastal or historical resources. No funds derived from the bonds authorized by this chapter shall be expended for the construction of any reservoir designated as a part of the "State Water Facilities," as defined in subdivision (d) of Section 12934 of the Water Code.

5096.374. (a) Prior to recommending the acquisition of lands that are located on or near tidelands, submerged lands, swamp or overflowed lands, or other wetlands, whether or not those lands have

been granted in trust to a local public agency, the Director of Parks and Recreation shall submit to the State Lands Commission any proposal by a state or local public agency for the acquisition of those lands pursuant to this chapter. The State Lands Commission shall, within three months of submittal, review the proposed acquisition, make a determination as to the state's existing or potential interest in the lands, and report its findings to the public agency proposing to acquire the land, to the Department of Parks and Recreation, and to the Department of General Services.

(b) No provision of this chapter shall be construed as authorizing the condemnation of state lands.

5096.375. In furtherance of the intent expressed by the people in paragraphs (5) and (6) of subdivision (a) of Section 2796 of the Fish and Game Code, as enacted by the people at the June 5, 1990, direct primary election, expenditures from the Park, Recreation, and Wildlife Enhancement Bond Fund of 1990 may be credited toward required expenditures from the Habitat Conservation Fund pursuant to Section 2787 of the Fish and Game Code, but only to the extent those expenditures are for the purposes expressed in Sections 2786, 2787, and 2791 of the Fish and Game Code.

5096.376. Funds allocated pursuant to subdivision (n) of Section 5096.310 shall be available for expenditure by the Department of Forestry and Fire Protection for site acquisition, facilities, rehabilitation, and capital improvements.

Article 6. Fiscal Provisions

5096.380. Bonds in the total amount of four hundred thirty-seven million dollars ($437,000,000), exclusive of refunding bonds, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

5096.381. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

5096.382. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Park, Recreation, and Wildlife Enhancement Program Finance Committee is hereby created. For

purposes of this chapter, the Park, Recreation, and Wildlife Enhancement Program Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Governor, the Controller, the Director of Finance, the Treasurer, and the Secretary of the Resources Agency, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the Resources Agency is designated the "board."

5096.383. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 5096.310, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

5096.384. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

5096.385. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 5096.386, appropriated without regard to fiscal years.

5096.386. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this chapter.

5096.387. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose

of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

5096.388. All money deposited in the fund which is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.389. The bonds may be refunded in accordance with Article 6 of the State General Obligation Bond Law. Approval by the voters of the state of the issuance of the bonds includes the approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

5096.390. Notwithstanding any provision of this chapter or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.391. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Section 1 of this act shall take effect upon the adoption by the voters of the California Park, Recreation, and Wildlife Enhancement Act of 1990, as set forth in Section 1 of this act.

SEC. 3. Except as otherwise provided in this act, all of the provisions of the Government Code and the Elections Code governing submission of statewide measures to the voters apply to this measure.

SEC. 4. (a) Notwithstanding Sections 3525, 3528, 3529, 3560, 3578, and 10218 of the Elections Code or any other provisions of law, Section 1 of this act shall be submitted to the voters at the November 6, 1990, general election.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the November 6, 1990, general election ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State

a ballot title for the bond act contained in Section 1 of this act within two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act contained in Section 1 of this act within five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 1 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

SEC. 5. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "California Park, Recreation, and Wildlife Enhancement Act of 1990," and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of four hundred thirty-seven million dollars ($437,000,000) to provide funds for a program of acquiring, developing, rehabilitating, or restoring real property for state and local park, beach, recreation, greenbelt, wildland fire protection, coastal, historic, or museum purposes." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide financing for urgently needed parks, beaches, recreational, greenbelt, wildland fire protection, and coastal areas and facilities, and museums as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 921

An act to add Chapter 5 (commencing with Section 23800) to Division 1 of Title 3 of the Government Code, relating to financing a county courthouse facility capital expenditure program by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Chapter 5 (commencing with Section 23800) is added to Division 1 of Title 3 of the Government Code, to read:

CHAPTER 5. COUNTY COURTHOUSE FACILITY CAPITAL EXPENDITURE BOND ACT OF 1990

Article 1. General Provisions

23800. This chapter shall be known and may be cited as the County Courthouse Facility Capital Expenditure Bond Act of 1990.

23801. The Legislature finds and declares all of the following:

(a) Counties have been unable to provide sufficient courtrooms to meet the demands placed on their courts.

(b) Numerous county courthouse facilities throughout California are approaching dilapidation or lack adequate security features.

(c) Capital improvements are necessary to protect the life and safety of judges, court personnel, and the public at large.

(d) County courthouse facilities must be expanded in order to alleviate the case processing delays that are undermining our judicial system.

(e) Due to fiscal constraints associated with the loss of local property tax revenues, counties are unable to finance the construction of adequate courthouse facilities.

(f) Local courthouse facilities are operating over capacity and the caseload is still increasing at a rapid rate. It is essential to our legal system that construction of new facilities proceed as expeditiously as possible to facilitate a speedy judicial process and maintain public confidence in our judicial system.

23802. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the County Courthouse Facility Capital Expenditure Finance Committee created pursuant to Section 23822.

(b) "Fund" means the 1990 County Courthouse Facility Capital Expenditure Bond Fund created pursuant to Section 23810.

(c) "County courthouse facilities" means county judicial facilities, including facilities for the adjudication of criminal and civil trials and the hearing of cases involving juveniles.

Article 2. County Courthouse Facility Capital Expenditure Program

23810. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the 1990 County Courthouse Facility Capital Expenditure Bond Fund, which is hereby created.

23811. (a) Moneys in the fund shall be available, upon appropriation, for the construction, reconstruction, remodeling, and the replacement of county courthouse facilities, and the performance of deferred maintenance on county courthouse facilities. However, deferred maintenance for facilities shall only include items with a useful life of at least 10 years.

(b) Expenditure shall be made only if county matching funds of 25 percent are provided as determined by the Legislature, except that this requirement may be modified or waived by the Legislature where determined necessary to facilitate the expeditious and equitable construction of local courthouse facilities.

23812. In order to be eligible to receive funds for the purposes specified in subdivision (a) of Section 23811 derived from the issuance of bonds under this title, a county shall do all of the following:

(a) Diligently maintain and report those statistics as may be reasonably required by the Judicial Council, and also develop a plan for the reduction of trial court delays. A county need not develop such a plan if it is already participating in a program under the Trial Court Delay Reduction Act of 1986 (Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government Code).

(b) Demonstrate that it does not have adequate facilities for the courts to expeditiously and safely carry out their responsibilities.

(c) Demonstrate that it has utilized, to the greatest practicable extent, available local financing for courthouse construction.

23813. Money in the fund may only be expended for projects specified in this chapter as allocated in appropriations made by the Legislature.

Article 3. Fiscal Provisions

23820. Bonds in the total amount of two hundred million dollars ($200,000,000), or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby

pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

23821. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

23822. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the County Courthouse Facility Capital Expenditure Finance Committee is hereby created. For purposes of this chapter, the County Courthouse Facility Capital Expenditure Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Governor, the Controller, the Treasurer, and the Director of Finance, or their designated representatives. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the Judicial Council of California is designated the "board."

23823. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 23811 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

23824. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

23825. Notwithstanding Section 13340, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 23826, appropriated without regard to fiscal years.

23826. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall

be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest those moneys would have earned in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

23826.5. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out the provisions of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

23827. All money deposited in the fund which is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

23828. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. Approval by the electors of the state for the issuance of the bonds shall include the approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

23829.5. Notwithstanding any provision of this chapter or the State General Obligation Bond Law as set forth in Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer shall be authorized to maintain separate accounts for the investment of bond proceeds and the investment earnings on such proceeds, and the Treasurer shall be authorized to use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

23829. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Section 1 of this act shall take effect upon the adoption by the voters of the County Courthouse Facility Capital Expenditure Bond Act of 1990, as set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding Sections 3525, 3528, 3529, 3560, 3578,

and 10218 of the Elections Code or any other provision of law, Section 1 of this act shall be submitted to the voters at the November 6, 1990, general election.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the November 6, 1990, general election ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for the bond act contained in Section 1 of this act within two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act contained in Section 1 of this act within five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 1 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

SEC. 4. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "County Courthouse Facility Capital Expenditure Bond Act of 1990," and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of two hundred million dollars ($200,000,000) to provide funds for the construction, reconstruction, remodeling, replacement, and deferred maintenance of county courthouse facilities." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

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 the bond act authorized by this act to appear on the November 1990 general election ballot, it is necessary that this act

take effect immediately.

CHAPTER 922

An act to add Chapter 2.9 (commencing with Section 1499) to Division 2 of the Health and Safety Code, relating to financing of a program of child care facilities through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State September 14, 1990.]

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

SECTION 1. Chapter 2.9 (commencing with Section 1499) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.9. CHILD CARE FACILITIES FINANCING ACT OF 1990

Article 1. General Provisions

1499. This chapter shall be known and may be cited as the Child Care Facilities Financing Act of 1990.

1499.01. It is the intent of the Legislature in submitting the Child Care Facilities Financing Act to the voters, that funds from the sale of bonds under this act be used to expand the capacity for child care services in licensed child care facilities. Expansion of licensed capacity may be accomplished through construction, acquisition, or conversion of an existing structure from its present use to use as a child care facility, or expansion of an existing child care facility in order to serve additional children.

The Legislature finds that there is a need for 1.5 to 2.5 million child care spaces in the state. With only 500,000 licensed child care spaces, this indicates a need for an additional one to two million child care spaces in the state.

In addition to the overall unmet need for child care serving all children, the Legislature further finds that there is significant unmet need for child care services among special populations of children, including abused and neglected children, handicapped children, children from low-income families, children who are sick, and children from one-parent families.

1499.01.5. Before or after approval by the voters, Articles 1 and 2 may be modified with full force and effect by a lawfully enacted act.

1499.02. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

1499.04. "Acquiring" means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a child care facility.

1499.06. "Altering" or "renovating" means making modifications to an existing facility which are necessary for expansion of existing capacity in a child care facility or conversion of a building to child care use, including restoration, repair, expansion, and all related physical improvements.

1499.08. "Authority" means the Child Care Facilities Authority.

1499.10. "Bond" means a state general obligation bond issued pursuant to this chapter adopting the State General Obligation Bond Law.

1499.12. "Bond fund" means the Child Care Facilities Bond Fund created pursuant to Section 1499.25.

1499.14. "Child day care facility" means a facility which provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for either sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. "Child day care facility," includes, but is not limited to, day care centers as defined in Section 1596.76. For purposes of this act, "child day care facility" does not include family day care homes, as defined in Section 1596.78.

1499.16. "Committee" means the Child Care Facilities Finance Committee created pursuant to Section 1499.54.

1499.18. "Constructing" means building a new facility, including the costs of land acquisition and architectural and engineering fees.

1499.20. "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars ($300) or more.

1499.22. "Nonprofit" means an institution or organization which is owned or operated by one or more corporations or associations with no part of the net earnings benefiting any private shareholder or individual.

Article 2. Child Care Program

1499.25. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Child Care Facilities Bond Fund, which is hereby created. The fund is hereby appropriated to the Controller, without regard to fiscal years, for allocation, upon the request of the Child Care Facilities Authority for the purposes specified in this chapter.

1499.27. There is hereby created in state government, the Child Care Facilities Authority. The authority shall consist of nine members as follows:

(a) The State Director of Social Services.

(b) The Superintendent of Public Instruction.

(c) A representative of the Child Development Program Advisory Committee.

(d) Two members appointed by the Senate Rules Committee, one of whom shall be either a child care provider or an individual who is knowledgeable about child care programs, and the other of whom shall be either an architect or an individual who is knowledgeable about the architectural design and development of child care facilities.

(e) Two members appointed by the Speaker of the Assembly, one of whom shall be either a child care provider or an individual who is knowledgeable about child care programs, and the other of whom shall be either an architect or an individual who is knowledgeable about the architectural design and development of child care facilities.

(f) Two members appointed by the Governor, one of whom shall be either a child care provider or an individual who is knowledgeable about child care programs, and the other of whom shall be either an architect or an individual who is knowledgeable about the architectural design and development of child care facilities.

The terms of the appointed members shall be four years. Members of the authority shall serve without compensation, but the authority may reimburse its members for necessary expenses incurred in the discharge of their duties. The authority shall appoint an executive director, who shall not be a member of the authority, and who shall serve at the pleasure of the authority. The executive director shall receive such compensation as shall be fixed by the authority.

1499.29. The authority shall make loans from funds derived from bonds issued pursuant to this chapter to public or private nonprofit agencies or other entities for the purpose of acquiring, renovating, constructing, and purchasing of equipment for child care facilities. The authority shall adopt guidelines concerning the terms and conditions for the repayment of loans made to eligible applicants under this chapter. The terms and conditions may include a requirement that a loan be secured by a trust deed or a lien equal in priority as a tax lien. In the case of a lien, the authority may, by resolution adopted prior to issuance of bonds under this chapter, covenant for the benefit of bondholders, the state, or both, to commence and diligently prosecute to completion any foreclosure action regarding delinquent installments of any repayment of loans issued pursuant to this chapter. The resolution may specify a deadline for commencement of the foreclosure action and other terms and conditions as the authority may determine to be reasonable regarding the foreclosure action. The terms and conditions shall include a requirement that the loan principal and interest repaid shall be sufficient to cover the principal of, and interest on, the bonds, and any administrative costs incurred in issuing the bonds, and any surcharge determined by the authority to be necessary or desirable.

1499.30. The authority may use funds in the bond fund to make any payments required as a result of these guarantees or reserve funds commitments, or may borrow funds from the Pooled Money

Investment Account for this purpose as authorized in this chapter. The authority shall not make guarantees or reserve commitments pursuant to this chapter to pay out more than the amount of bonds approved for issuance by the finance committee, nor shall its guarantee or reserve commitments constitute an obligation on the part of the authority, the State of California, or any of its political subdivisions, to levy any tax or pay any amount beyond this limit.

1499.30.5. The authority may use money in the bond fund to pay for the cost of administering the program created by this chapter, not to exceed three million dollars ($3,000,000). The authority shall, to the degree feasible, charge loan recipients a surcharge sufficient to eventually recover those amounts advanced for administration, and these recovered amounts shall be placed in the bond fund.

1499.31. (a) Eligible applicants for funding under this chapter include units of local government, nonsectarian profit or nonprofit private agencies or organizations, and state agencies.

(b) To the extent permitted by both the United States and California Constitutions, a church-affiliated child care facility or other sectarian organization shall be eligible to receive loans under this chapter if all of the following conditions are satisfied:

(1) The child care facility funded by the funds loaned is open to any child, regardless of the child's religious beliefs or any other factors related to religion.

(2) No religious instruction is included in the child care program.

(3) The facility where the child care program is located is not utilized in any manner to foster religion.

1499.33. (a) A recipient of a contract for the acquisition of a facility to be used as a child care facility shall assure that the facility shall be used for that purpose for at least 10 years from the date of acquisition.

(b) A recipient of a contract for the renovation of an existing facility to be used as a child care facility shall assure the authority that the facility shall be used for that purpose for the following periods:

(1) Not less than three years from the date the contract terminates, where the amount of the contract does not exceed thirty thousand dollars ($30,000).

(2) If the contract exceeds thirty thousand dollars ($30,000), the fixed period of time shall increase one year for each additional ten thousand dollars ($10,000) or part thereof, to a maximum of seventy-five thousand dollars ($75,000).

(3) For contracts which exceed seventy-five thousand dollars ($75,000), the fixed period of time shall not be less than 10 years.

(c) A recipient of a contract for the construction of a facility to be used as a child care facility shall assure the authority the facility shall be used for that purpose for at least 15 years after completion of construction.

1499.35. (a) The state shall be entitled to recapture a portion of bond funds from the owner of a facility, if within 10 years after acquisition or 15 years after completion of construction, the facility

is no longer used for child care activities.

(b) The amount recovered shall be that proportion of the current value of the facility equal to the proportion of bond funds contributed to the original cost. The current value of the facility shall be determined by an agreement between the owner of the facility and the state, or by an action in the court in the jurisdiction in which the facility is located.

1499.37. The authority shall secure the advice of child care resource and referral agencies on the development of estimates of unmet need by geographic area and by special populations, including children in one-parent families, children in low-income families, handicapped children, children with teenage parents, children who are or are at risk of being abused or neglected, sick children, and children in need of emergency or respite care. The authority shall issue guidelines for applicants which shall be consistent with the criteria developed by the authority in consultation with child care resource and referral agencies.

The authority shall review and evaluate proposals for funding from each applicant.

1499.39. Proposals shall do all of the following:

(a) Document the need for a child care facility, or expansion or equipment purchase in order to expand licensed capacity.

(b) Contain a written commitment from applicants that child care services shall be provided in the child care facility.

(c) Contain a match for funding equal to 15 percent of the total amount requested. The authority may waive this matching requirement for public agencies upon verifying that the applicant is unable to secure the required match and that the proposal would provide services to a population with significant unmet needs.

(d) Document the cost effectiveness of the proposal.

(e) Document that the applicant's proposal cannot be funded through any other source of state funds for child care capital outlay.

(f) Document that the planned facility shall comply with all laws and regulations applicable to child care facilities provided for pursuant to Chapter 3.4 (commencing with Section 1596.70) and Chapter 3.5 (commencing with Section 1596.90).

(g) Demonstrate to the satisfaction of the authority that it will have sufficient revenues to pay the principal and interest on the loan and to maintain the operation of the child care facility.

1499.41. The authority shall rank the proposals. In ranking the proposals, the authority shall utilize all of the following criteria:

(a) Those planned facilities which are both structurally sound and appropriately designed for use by children.

(b) Those applicants most qualified to operate a child care program.

(c) The extent to which a facility would serve a population with significant unmet need.

1499.43. The authority shall consider any protest or objection regarding a proposed loan, whether submitted before or after the

loan is made. However, the protest shall be filed within the time period established in the request for proposals made pursuant to Section 1499.37. All protests or objections shall be filed in writing. The protesting party shall be notified in writing of the final decisions on the protest, and the notification shall set forth the rationale upon which the decision is based.

Child Day Care Facilities Bond Fund allocations shall be made in such a manner as to provide proportional benefit to all geographic areas of the state. The proportional benefit shall be based on the number of persons under the age of 14 and estimates of unmet need for child care.

Funds not utilized by a geographic area shall be reallocated to other areas with the highest documented need for child care services.

The authority shall allocate funds to assure that at least 30 percent shall be available to private nonprofit agencies and at least 20 percent shall be available to other private agencies.

Article 3. Fiscal Provisions Concerning General Obligation Bonds

1499.50. Bonds in the total amount of thirty million dollars ($30,000,000), in addition to the amount of any refunding bonds, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter, including any subsequent amendment pursuant to Section 1499.01.5, and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

1499.52. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

1499.54. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Child Care Finance Committee is hereby created. For purposes of this chapter, the Child Care Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, the Director of Finance, and the Superintendent of Public Instruction or their designated representatives. A majority of the committee may act for the

committee.

(b) For purposes of the State General Obligation Bond Law, the Child Care Facilities Authority is designated the "board."

1499.56. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 1499.29, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

1499.58. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

1499.60. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 1499.66, appropriated without regard to fiscal years.

1499.64. All money deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund, this money shall be applied as a reimbursement to the General Fund on account of principal and interest on the bonds which have been paid from the General Fund.

1499.66. For purposes of carrying out this chapter, the Director of Finance may, pursuant to appropriate authority in each annual Budget Act, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the authority in accordance with this chapter. All money deposited in the fund which is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest. Any moneys made available to the board under this section shall be returned by the board to the General Fund, together with interest in the amount those moneys would have earned in the Pooled Money Investment Account, from the sale of bonds sold for the purpose of carrying out this chapter.

1499.67. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents pertaining to obtaining and repaying the loan that may be required by the Pooled Money Investment Board. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

1499.68. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Sections 1499.29 and 1499.30 but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as provided in this chapter.

1499.69. Any bonds issued and sold pursuant to this chapter may be refunded by the issuance of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of the Government Code. Approval by the electors of the state for the issuance of bonds includes the approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

1499.70. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

1499.71. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), with regard to the proceeds from the sale of bonds authorized by this chapter that are subject to investment under Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, the Treasurer may maintain a separate account for investment earnings, order the payment of those earnings to comply with any rebate requirement applicable under federal law, and otherwise direct the use and investment of those proceeds so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

SEC. 2. Section 1 of this act shall take effect upon the adoption by the voters of the Child Care Facilities Financing Act of 1990, as set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding Sections 3525, 3528, 3529, 3560, 3578, and 10218 of the Elections Code or any other provisions of law, Section 1 of this act shall be submitted to the voters at the November 6, 1990, general election.

(b) The Secretary of State shall ensure the placement of Section

1 of this act on the November 6, 1990, general election ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for the bond act contained in Section 1 of this act within two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act contained in Section 1 of this act within five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 1 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

SEC. 4. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "Child Care Facilities Financing Act of 1990," and in the same square under those words, the following in eight-point type: "This act provides for a bond issue of thirty million dollars ($30,000,000) to provide funds for child care facilities." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Child Care Facilities Financing Act of 1990 contained in Section 1 of this act may be included on the November 6, 1990, general election ballot, it is necessary that this act take immediate effect.

CHAPTER 923

An act to add Sections 51268 and 51269 to the Education Code, and to amend Section 13864 of the Penal Code, relating to education.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

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

(1) There are enormous economic and social costs related to drug, alcohol, and tobacco abuse in the State of California.

(2) It is estimated that over $11,000,000,000 is expended annually in health, medical, and social services costs and on the costs incurred as a result of motor vehicle accidents, violent crimes, and fire losses resulting from alcohol abuse. An additional $6,000,000,000 is expended annually in connection with incidents relating to drug problems.

(3) The Attorney General's 1989–90 Biennial Survey of Drug and Alcohol Use Among California Students found that, among 11th grade pupils: 35.3 percent reported having tried an illicit drug; 6.9 percent reported using marijuana once a week or more often; 7.4 percent reported using cocaine within the previous six months; and 23.8 percent reported smoking cigarettes.

(4) The use of alcohol and other drugs by young people often coincides with low self-image and low self-esteem, and problem behaviors such as low academic performance, truancy and dropping out of school, teenage pregnancy, delinquency, gang membership, and gang violence, which have long-term consequences for individuals, families, and society as a whole.

(5) The successful delivery of comprehensive, age-appropriate curricula and programs in kindergarten and grades 1 to 12, inclusive, to prevent drug, alcohol, and tobacco use among youth can assist in the reduction of drug, alcohol, and tobacco use and other problem behaviors such as low academic performance, truancy and dropping out of school, and teenage pregnancy, delinquency, gang membership, and gang violence.

(6) The greatest increase in drug and alcohol use among young people occurs between grades 7 and 9, making school and community drug and alcohol prevention particularly critical in grades 4 to 8, inclusive.

(7) Existing prevention curricula and programs targeted for youth are administered by different state and local agencies, often are not coordinated among the agencies or within communities, and have not been carefully evaluated for their effectiveness.

(8) Coordination and collaboration are vitally important in developing an effective drug, alcohol, and tobacco prevention effort

at the state, county, and local levels.

(9) It is the policy of this state to strongly encourage the development of a five-year master plan to reduce alcohol and drug abuse in California. That master plan shall encourage coordination, collaboration, and cooperation at all levels of government to foster and enhance the efficient and effective delivery of prevention education programs in schools and communities.

(b) It is the intent of the Legislature that the State of California do all of the following:

(1) Coordinate existing and future alcohol, drug, and tobacco abuse prevention programs.

(2) Encourage health, social services, criminal justice, and educational agencies and communities in developing ongoing commitment, collaboration, and support for those prevention programs.

(3) Establish a framework to ensure that state and local agencies administer and expend state and federal resources for curricula, programs, and policies for alcohol, drug, and tobacco prevention that are effective, well planned, collaborative, and coordinated at the state and local levels.

SEC. 2. Section 51268 is added to the Education Code, to read:

51268. The State Department of Education shall encourage school districts and county offices of education to avoid duplication of efforts with regard to education programs for the prevention of drug, alcohol, and tobacco abuse through the following methods:

(a) The sharing of resources.

(b) The adaptation or adoption of model programs.

(c) The development of joint and collaborative programs.

(d) Coordination of the local planning and implementation of state programs with local health, social services, criminal justice, and education agencies and other entities.

(e) The use of a single community advisory committee or task force for drug, alcohol, and tobacco abuse prevention programs, as an alternative to the creation of a separate group for that purpose under each state or federally funded program.

SEC. 3. Section 51269 is added to the Education Code, to read:

51269. (a) The State Department of Education shall collaborate, to the extent possible, with other state agencies that administer drug, alcohol, and tobacco abuse prevention education programs to streamline and simplify the process whereby local educational agencies apply for state and federal drug, alcohol, and tobacco education funds.

(b) The State Department of Education, in consultation with the Department of Justice, the Office of Criminal Justice Planning, and the State Department of Alcohol and Drug Programs, shall develop, to the extent possible, an ongoing statewide monitoring and assessment system to provide current and reliable data on the utilization of resources for programs for prevention of and early intervention for drug, alcohol, and tobacco abuse. The purpose of the

system shall be to facilitate improved planning and program delivery among state and local agencies, including law enforcement, juvenile justice, county health, and county drug and alcohol agencies and programs, and communities.

SEC. 4. Section 13864 of the Penal Code is amended to read:

13864. There is hereby created, in the Office of Criminal Justice Planning, the Comprehensive Alcohol and Drug Prevention Education component of the Suppression of Drug Abuse in Schools Program in public elementary schools in grades 4 to 6, inclusive. Notwithstanding Section 13861 or any other provision in this code, all Comprehensive Alcohol and Drug Prevention Education component funds made available to the Office of Criminal Justice Planning in accordance with the Classroom Instructional Improvement and Accountability Act shall be administered by and disbursed to county superintendents of schools in this state by the Executive Director of the Office of Criminal Justice Planning. All applications for that funding shall be reviewed and evaluated by the Office of Criminal Justice Planning, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education.

(a) The executive director is authorized to allocate and award funds to county department superintendents of schools for allocation to individual school districts or to a consortium of two or more school districts. Applications funded under this section shall comply with the criteria, policies, and procedures established under subdivision (b) of this section.

(b) As a condition of eligibility for the funding described in this section, the school district or consortium of school districts shall have entered into an agreement with a local law enforcement agency to jointly implement a comprehensive alcohol and drug abuse prevention, intervention, and suppression program developed by the Office of Criminal Justice Planning, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, containing all of the following components:

(1) A standardized age-appropriate curriculum designed for pupils in grades 4 to 6, inclusive, specifically tailored and sensitive to the socioeconomic and ethnic characteristics of the target pupil population. Although new curricula shall not be required to be developed, existing curricula may be modified and adapted to meet local needs. The elements of the standardized comprehensive alcohol and drug prevention education program curriculum shall be defined and approved by the Governor's Policy Council on Drug and Alcohol Abuse, as established by Executive Order # D-70-80.

(2) A planning process that shall include both assessment of the school district's characteristics, resources and the extent of problems related to juvenile drug abuse, and input from local law enforcement agencies.

(3) A school district governing board policy that provides for a

coordinated intervention system that, at a minimum, includes procedures for identification, intervention, and referral of at-risk alcohol- and drug-involved youth, and identifies the roles and responsibilities of law enforcement, school personnel, parents, and pupils.

(4) Early intervention activities that include, but are not limited to, the identification of pupils who are high risk or have chronic drug abuse problems, assessment, and referral for appropriate services, including ongoing support services.

(5) Parent education programs to initiate and maintain parental involvement, with an emphasis for parents of at-risk pupils.

(6) Staff and in-service training programs, including both indepth training for the core team involved in providing program services and general awareness training for all school faculty and administrative, credentialed, and noncredentialed school personnel.

(7) In-service training programs for local law enforcement officers.

(8) School, law enforcement, and community involvement to ensure coordination of program services. Pursuant to that coordination, the school district or districts and other local agencies are encouraged to use a single community advisory committee or task force for drug, alcohol, and tobacco abuse prevention programs, as an alternative to the creation of a separate group for that purpose under each state or federally funded program.

(c) The application of the county superintendent of schools shall be submitted to the Office of Criminal Justice Planning. Funds made available to the Office of Criminal Justice Planning for allocation under this section are intended to enhance, but shall not supplant, local funds that would, in the absence of the Comprehensive Alcohol and Drug Prevention Education component, be made available to prevent, intervene in, or suppress drug abuse among school age children. For districts that are already implementing a comprehensive drug abuse prevention program for pupils in grades 4 to 6, inclusive, the county superintendent shall propose the use of the funds for drug prevention activities in school grades other than 4 to 6, inclusive, compatible with the program components of this section. The expenditure of funds for that alternative purpose shall be approved by the executive director.

(1) Unless otherwise authorized by the Office of Criminal Justice Planning, each county superintendent of schools shall be the fiscal agent for any Comprehensive Alcohol and Drug Prevention Education component award, and shall be responsible for ensuring that each school district within that county receives the allocation prescribed by the Office of Criminal Justice Planning. Each county superintendent shall develop a countywide plan that complies with program guidelines and procedures established by the Office of Criminal Justice Planning pursuant to subdivision (d). A maximum of 5 percent of the county's allocation may be used for administrative costs associated with the project.

(2) Each county superintendent of schools shall establish and chair a local coordinating committee to assist the superintendent in developing and implementing a countywide implementation plan. This committee shall include the county drug administrator, law enforcement executives, school district governing board members and adminstrators, school faculty, parents, and drug prevention and intervention program executives selected by the superintendent and approved by the county board of supervisors.

(d) The Executive Director of the Office of Criminal Justice Planning, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, shall prepare and issue guidelines and procedures for the Comprehensive Alcohol and Drug Prevention Education component consistent with this section.

(e) The Comprehensive Alcohol and Drug Prevention Education component guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to award grants of funds pursuant to this section. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(f) Funds awarded under the Comprehensive Alcohol and Drug Prevention Education Program shall not be subject to Section 10318 of the Public Contracts Code.

(g) Commencing January 1, 1991, or six months after a full year of program operation, whichever occurs later, the executive director shall prepare and submit an annual report to the Legislature describing the operation of the program and the results obtained from the Comprehensive Alcohol and Drug Prevention Education component receiving funds under this section.

(h) Funds available pursuant to Item 8100-111-001 and Provision 1 of Item 8100-001-001 of the Budget Act of 1989, or the successor provision of the appropriate Budget Act, shall be allocated to implement this section.

(i) The Executive Director of the Office of Criminal Justice Planning shall collaborate, to the extent possible, with other state agencies that administer drug, alcohol, and tobacco abuse prevention education programs to streamline and simplify the process whereby local educational agencies apply for drug, alcohol, and tobacco education funding under this section and under other state and federal programs. The Office of Criminal Justice Planning, the State Department of Alcohol and Drug Programs, the State Department of Education, and other state agencies, to the extent possible, shall develop joint policies and collaborate planning in the administration of drug, alcohol, and tobacco abuse prevention education programs.

CHAPTER 924

An act relating to nurses.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990]

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

SECTION 1. (a) It is the intent of the Legislature to encourage the provision of an adequate supply of registered nurses to meet the demands of Californians for health care by examining the capacity of public and private institutions of higher education to educate a sufficient number of registered nurses.

(b) It is further the intent of the Legislature to encourage articulation between the programs to educate registered nurses in community colleges and the California State University in order to meet the needs of those who wish to seek the baccalaureate of science of nursing degree.

SEC. 2. The California Postsecondary Education Commission shall conduct a preliminary inquiry into the capacity of public and private institutions of higher education in California to educate registered nurses. This inquiry shall include a documentation of the existing enrollment capacity among these institutions, as well as identification of plans for expansion of enrollments on existing campuses and the possible addition of new programs.

The California Postsecondary Education Commission is requested to conduct a review of the status of curriculum articulation between community colleges and California State University nursing programs. This review is to be done in consultation with representatives of the Board of Registered Nursing, nursing professional associations, associations of employers of nurses, associations of nursing educators, the Chancellor of the California Community Colleges or his or her designee, and the Chancellor of the California State University system or his or her designee.

The results of the inquiry and the review, if conducted, shall be submitted to the Legislature on or before February 15, 1991.

CHAPTER 925

An act to amend Section 10131.01 of the Business and Professions Code, relating to real estate brokers.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 10131.01 of the Business and Professions Code is amended to read:

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel, motel, auto and trailer park, to the resident manager of an apartment building, apartment complex, or court, or to the employees of that manager or (2) any person other than the resident manager or employees of that manager, performing the following functions who is the employee of the property management firm retained to manage a residential apartment building or complex or court and who is performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.

(E) Accepting signed leases and rental agreements from prospective tenants.

(b) A broker or salesperson shall exercise reasonable supervision and control over the activities of nonlicensed persons acting under paragraph (2) of subdivision (a).

(c) A broker employing nonlicensed persons to act under paragraph (2) of subdivision (a) shall comply with Section 10163 for each apartment building or complex or court where the nonlicensed persons are employed.

CHAPTER 926

An act to amend Section 2203 of the Corporations Code, and to amend Sections 23301, 23301.5, 23302, 23305, and 23305a of, to amend and renumber Section 23572 of, to add Sections 23301.6, 23304.1, 23304.5, 23305.1, 23305.2, and 23305c to, to repeal and add Section 23571 of, and to repeal Section 23304 of, the Revenue and Taxation Code, relating to corporations.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 2203 of the Corporations Code is amended to read:

2203. (a) Any foreign corporation which transacts intrastate business and which does not hold a valid certificate from the Secretary of State may be subject to a penalty of twenty dollars ($20) for each day that unauthorized intrastate business is transacted; and the foreign corporation, by transacting unauthorized intrastate business, shall be deemed to consent to the jurisdiction of the courts of California in any civil action arising in this state in which the corporation is named a party defendant.

(b) The penalty established by subdivision (a) of this section shall be assessed according to the number of days it is found that the corporation has been willfully doing unauthorized intrastate business. Prosecution under this section may be brought, and the money penalty recovered thereby shall be paid, in the manner provided by Section 2258 for a prosecution brought under that section. The amount of the penalty assessed shall be determined by the court based upon the circumstances, including the size of the corporation and the willfulness of the violation.

(c) A foreign corporation subject to the provisions of Chapter 21 (commencing with Section 2100) which transacts intrastate business without complying with Section 2105 shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance with Section 2105, until it has complied with the provisions thereof and has paid to the Secretary of State a penalty of two hundred fifty dollars ($250) in addition to the fees due for filing the statement and designation required by Section 2105 and has filed with the clerk of the court in which the action is pending receipts showing the payment of the fees and penalty and all franchise taxes and any other taxes on business or property in this state that should have been paid for the period during which it transacted intrastate business.

SEC. 2. Section 23301 of the Revenue and Taxation Code is amended to read:

23301. Except for the purposes of filing an application for exempt

status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state may be forfeited, if any of the following conditions occur:

(a) If any tax, penalty, or interest, or any portion thereof, which is due and payable either at the time the return is required to be filed, or on or before the 15th day of the ninth month following the close of the income year, is not paid on or before 6 p.m. on the last day of the 12th month after the close of the income year.

(b) If any tax, penalty, or interest, or any portion thereof, due and payable upon notice and demand from the Franchise Tax Board, or due and payable under Section 25936, is not paid on or before 6 p.m. on the last day of the 11th month following the due date of the tax.

(c) If any liability, or any portion thereof, which is due and payable under Article 5 (commencing with Section 18681) of Chapter 18 of Part 10, is not paid on or before 6 p.m. on the last day of the 11th month following the date that the tax liability is due and payable.

SEC. 3. Section 23301.5 of the Revenue and Taxation Code is amended to read:

23301.5. Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights and privileges of a domestic corporation may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state may be forfeited, if a taxpayer fails to file a return.

SEC. 4. Section 23301.6 is added to the Revenue and Taxation Code, to read:

23301.6. Sections 23301, 23301.5, 23571, and 23775 shall apply to a foreign taxpayer only if the taxpayer is qualified to do business in California. A taxpayer that is required under Section 2105 of the Corporations Code to qualify to do business shall not be deemed to have qualified to do business for purposes of this article unless the taxpayer has in fact qualified with the Secretary of State.

SEC. 5. Section 23302 of the Revenue and Taxation Code is amended to read:

23302. (a) Forfeiture or suspension of a taxpayer's powers, rights, and privileges pursuant to Section 23301, 23301.5, 23571, or 23775 shall occur and become effective only as expressly provided in this section.

(b) The notice requirements of Section 21020 shall apply to any suspension of a taxpayer's corporate powers, rights, and privileges pursuant to Section 23571, and to any forfeiture of a taxpayer's corporate powers, rights, and privileges pursuant to Section 23301, 23301.5, 23571, or 23775.

(c) The Franchise Tax Board shall transmit the names of

taxpayers to the Secretary of State as to which the suspension or forfeiture provisions of Section 23301, 23301.5, 23571, or 23775 are or become applicable, and the suspension or forfeiture therein provided for shall thereupon become effective. The certificate of the Secretary of State shall be prima facie evidence of the suspension or forfeiture.

(d) If a taxpayer's powers, rights, and privileges are forfeited or suspended pursuant to Section 23301, 23301.5, 23571, or 23775, without limiting any other consequences of such forfeiture or suspension, the taxpayer shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension.

SEC. 6. Section 23304 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 23304.1 is added to the Revenue and Taxation Code, to read:

23304.1. (a) Every contract made in this state by a taxpayer during the time that the taxpayer's corporate powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, 23571, or 23775 shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(b) If a foreign taxpayer that neither is qualified to do business nor has a corporate account number from the Franchise Tax Board, fails to file a tax return required under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501), any contract made in this state by such taxpayer during the applicable period specified in subdivision (c) shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(c) For purposes of subdivision (b), the applicable period shall be the period beginning on January 1, 1991, or the first day of the income year for which the taxpayer has failed to file a return or pay taxes, whichever is later, and ending on the later of the date the taxpayer qualified to do business in this state or the date the taxpayer obtained a corporate account number from the Franchise Tax Board.

(d) If a taxpayer fails to file a tax return required under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501), to pay any tax or other amount owing to the Franchise Tax Board under Chapter 2 (commencing with Section 23101), Chapter 3 (commencing with Section 23501), Section 23707 or 23772, or to file any statement or return required under Section 23772 or 23774, within 60 days of receiving written demand therefor from the Franchise Tax Board, any contract made in this state by the taxpayer during the period beginning at the end of the 60-day demand period and ending on the date the taxpayer files the return or statement, or satisfies the liability to the Franchise Tax Board, including through the application of Section 23305.2, shall be voidable at the instance of any party to the contract other than the taxpayer. This subdivision shall apply only to a taxpayer if the

taxpayer has a corporate account number from the Franchise Tax Board, but has not qualified to do business under Section 2105 of the Corporations Code.

SEC. 8. Section 23304.5 is added to the Revenue and Taxation Code, to read:

23304.5. A party that has the right to declare a contract to be voidable pursuant to Section 23304.1 may exercise that right only in a lawsuit brought by either party with respect to the contract in a court of competent jurisdiction and the rights of the parties to the contract shall not be affected by Section 23304.1 except to the extent expressly provided by a final judgment of the court, which judgment shall not be issued unless the taxpayer is allowed a reasonable opportunity to cure the voidability under Section 23305.1. If the court finds that the contract is voidable under Section 23304.1, the court shall order the contract to be rescinded. However, in no event shall the court order rescission of a taxpayer's contract unless the taxpayer receives full restitution of the benefits provided by the taxpayer under the contract.

SEC. 9. Section 23305 of the Revenue and Taxation Code is amended to read:

23305. Any taxpayer which has suffered the suspension or forfeiture provided for in Section 23301 or 23301.5 may be relieved therefrom upon making application therefor in writing to the Franchise Tax Board and upon payment of the tax, additions to tax, penalties, interest, and any other amounts for nonpayment of which the suspension or forfeiture occurred, together with all other taxes, additions to tax, penalties, interest, and any other amounts due under this part, and upon the issuance by the Franchise Tax Board of a certificate of revivor. Application for the certificate on behalf of any taxpayer which has suffered suspension or forfeiture may be made by any stockholder or creditor, by a majority of the surviving trustees or directors thereof, by an officer, or by any other person who has interest in the relief from suspension or forfeiture.

SEC. 10. Section 23305a of the Revenue and Taxation Code is amended to read:

23305a. Before the certificate of revivor is issued by the Franchise Tax Board, it shall obtain from the Secretary of State an endorsement upon the application of the fact that the name of the taxpayer then meets the requirements of subdivision (b) of Section 201 of the Corporations Code in the case of a domestic taxpayer or of subdivision (b) of Section 2106 of the Corporations Code in the case of a foreign taxpayer that has qualified to do business. The reference to amendment of the articles of incorporation to set forth a new name contained in Sections 23301, 23301.5, 23571, and 23775 includes in the case of a foreign taxpayer the filing of an amended statement and designation to set forth its new name or to set forth an assumed name under subdivision (b) of Section 2106 of the Corporations Code. Upon the issuance of the certificate by the Franchise Tax Board the taxpayer therein named shall become reinstated but the

reinstatement shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture, except that contracts which were voidable pursuant to Section 23304.1, but which have not been rescinded pursuant to Section 23304.5, may have that voidability cured in accordance with Section 23305.1. The certificate of revivor shall be prima facie evidence of the reinstatement and the certificate may be recorded in the office of the county recorder of any county of this state.

SEC. 11. Section 23305c is added to the Revenue and Taxation Code, to read:

23305c. Upon issuance of the certificate of revivor, the Franchise Tax Board shall transmit to the Secretary of State the revived taxpayer's name and its corporate number or account number as issued by the Franchise Tax Board. The taxpayer's name and number, the fact that the taxpayer's corporate powers, rights, and privileges have been revived and the effective date of the revivor shall be a matter of public record.

SEC. 12. Section 23305.1 is added to the Revenue and Taxation Code, to read:

23305.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 23304.1. To be relieved from voidability, the taxpayer shall do all of the following:

(1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.

(2) Include on the application the period for which relief is requested, which period shall begin on the date that one of the taxpayer's income years begins and ends on the date the application is made.

(3) File any tax returns required to be filed with the Franchise Tax Board, including returns for the period for which relief is requested.

(4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any such liability attributable to the period for which relief is requested.

(5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.

(b) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested. Any penalty imposed under this subdivision shall, subject to Section 23305.2, be due and payable on demand by the Franchise Tax Board.

(c) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 23305.2, all contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 23304.5 may be enforced in the same manner and to the same extent, with

regard to both the parties to the contract and any third parties, as if the contract had never been voidable. Upon being granted relief from voidability, the Franchise Tax Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, as directed by the taxpayer, and shall indicate the period for which relief is granted.

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this state.

(e) A taxpayer that applies for revivor under Section 23305 shall not be entitled to later apply for relief from voidability under this section, but must simultaneously apply for revivor and relief from voidability. A taxpayer that applies for relief from voidability under this section shall not be entitled to later apply for relief from voidability for any income year ending prior to the date of the application, but shall simultaneously apply for relief for all income years prior to that date.

SEC. 13. Section 23305.2 is added to the Revenue and Taxation Code, to read:

23305.2. Notwithstanding Sections 23305 and 23305.1 that require a taxpayer to pay any liability to the Franchise Tax Board as a condition to revivor or relief from voidability, the Franchise Tax Board shall issue a certificate of revivor under Section 23305, or of relief from voidability under Section 23305.1, if the taxpayer provides the Franchise Tax Board with an assumption of liability, or a bond, deposit, or other security for taxpayer's liability, that is acceptable to the Franchise Tax Board. The Franchise Tax Board shall notify the person filing the application for revivor or relief from voidability of the amount of the bond, deposit, or other security, or of the terms of an assumption of liability, that must be furnished as a condition of the revivor or the relief from voidability. Obtaining revivor or voidability relief by securing the debt pursuant to this section shall not constitute an admission of liability by the taxpayer, nor relieve the taxpayer or any individual, bank, or corporation from liability for any taxes, additions to tax, penalties, or interest imposed by this part. A taxpayer that provides an assumption of liability or a bond, deposit, or other security to obtain revivor or relief from voidability may, notwithstanding Section 23305 or 23305.1, file any returns required under those sections within a reasonable time after relief is granted by the Franchise Tax Board.

SEC. 14. Section 23571 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 23571 is added to the Revenue and Taxation Code, to read:

23571. Except for the purposes of filing an application for exempt status or amending the articles of incorporation, and subject to Section 23301.6, the corporate powers, rights, and privileges of a taxpayer in this state may be forfeited or suspended if the taxpayer fails to file a return required under Chapter 3 (commencing with Section 23501), or to pay when due any tax, addition to tax, penalty or interest imposed under Chapter 3 (commencing with Section 23501). Any corporation which has suffered the forfeiture or suspension provided for in this section may, in accordance with Section 23305, be relieved therefrom upon application for that relief to the Franchise Tax Board and the payment of all liabilities under Chapter 3 (commencing with Section 23501). Application for relief from forfeiture or suspension may be made by any stockholder or creditor, by a majority of the surviving trustees or directors, by an officer, or by any other person who has interest in the relief from forfeiture or suspension.

SEC. 16. Section 23572 of the Revenue and Taxation Code is amended and renumbered to read:

23305d. A certificate of suspension or forfeiture from the Franchise Tax Board setting forth that the suspended or forfeited taxpayer has been notified of its liability for tax or requirement to file a return under this part and that the tax has not been paid or the return has not been filed, shall constitute prima facie evidence of the facts.

SEC. 17. (a) No contract entered into by a taxpayer prior to the effective date of this act shall be voidable under Article 7 (commencing with Section 23301) of Chapter 2 of the Revenue and Taxation Code, unless the contract was entered into during the time that the taxpayer's powers, rights, and privileges in this state were forfeited or suspended by the Franchise Tax Board through notice to the Secretary of State as provided in Section 23302 of the Revenue and Taxation Code. A contract entered into after the effective date of this act by a taxpayer that has not been forfeited or suspended by the Franchise Tax Board through notice to the Secretary of State shall be voidable only to the extent expressly provided in subdivision (b) or (e) of Section 23304.1 of the Revenue and Taxation Code.

(b) A taxpayer that entered into a contract during a time when the taxpayer's powers, rights, and privileges were forfeited or suspended by the Franchise Tax Board in accordance with the procedures set forth in Section 23302 of the Revenue and Taxation Code, even if the contract was entered into before the effective date of this act, shall be entitled to apply for relief from voidability pursuant to Section 23305.1 of the Revenue and Taxation Code in connection with an application for revivor. A taxpayer that received a certificate of revivor after January 1, 1990, and prior to the effective date of this act, may apply for relief from voidability with respect to any contract that is voidable because the contract was entered into by the taxpayer at a time when the taxpayer's corporate powers, rights, and privileges were suspended or forfeited.

(c) Notwithstanding subdivision (a) or (b), the Legislature intends that this act shall not be construed in any manner that would affect the rights of any party to any action that has been commenced in a court of competent jurisdiction prior to the date of enactment of this act, or the rights of any such party in a subsequent action based upon the same claims as those asserted in the prior action, and that all such rights shall be determined without application of any provisions of this act, and shall be determined by the law in effect prior to the effective date of this act.

SEC. 18. The Franchise Tax Board shall study the impact and effectiveness of this act, and prepare a report of that study, along with any recommendations for legislative changes, to be submitted to the Legislature on or before December 31, 1993.

SEC. 19. If any provision of this act or the application thereof to any person or circumstances is held to be unconstitutional, the remainder of the act and the application of that provision to other persons or circumstances shall not be affected thereby.

CHAPTER 927

An act to amend Section 2.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), relating to water.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Pursuant to Section 13466 of the Water Code, the State Water Resources Control Board is hereby authorized to make loans in the amount of twenty-three million six hundred sixteen thousand dollars ($23,616,000) from the amount appropriated in Item 3940-101-744 of the Budget Act of 1990 from the Agricultural Drainage Water Account in the 1986 Water Conservation and Water Quality Bond Fund, in accordance with the Water Conservation and Water Quality Bond Law of 1986 (Chapter 6.1 (commencing with Section 13450) of Division 7 of the Water Code), to the following local agencies to aid in the construction of drainage water management units for the treatment, storage, or disposal of agricultural drainage water, and any feasibility studies therefor, in accordance with the following schedule:

(a) Six hundred thousand dollars ($600,000) to the Panoche Drainage District for a drainage water conveyance project.

(b) Nineteen million eight thousand dollars ($19,008,000) to the Orange County Water District for a groundwater treatment facility project.

(c) Four million eight thousand dollars ($4,008,000) to the City of Fresno for a DBCP treatment facility project.

SEC. 2. Section 2.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), is amended to read:

Sec. 2.5. (a) The district, by a four-fifths vote of the board of directors, may issue negotiable promissory notes to acquire funds for any district purpose. Such promissory notes shall bear interest at a rate not to exceed the maximum interest rate provided for in Section 53531 of the Government Code. The maturity of such promissory notes shall not be later than five years from the date thereof. They shall be payable from revenues and taxes levied for purposes of the district other than the payment of principal and interest on any bonded debt of the district. The total aggregate amount of such notes outstanding at any one time shall not exceed the lesser of either five million dollars ($5,000,000) or 3 percent of the assessed valuation of the taxable property in the district.

(b) Notwithstanding any other provision of this act, the district may enter into agreements with the United States, the state, or any department, agency, or official of the United States or state, for the grant or loan of funds to the district for any district purpose, upon those terms and conditions which may be determined by the board of directors.

CHAPTER 928

An act to add Section 325.5 to the Unemployment Insurance Code, relating to employment services.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 325.5 is added to the Unemployment Insurance Code, to read:

325.5. The department, in consultation and coordination with veterans' organizations and veteran service providers, shall do all of the following:

(a) Research the needs of veterans throughout the state and develop a profile of veterans' employment and training needs.

(b) Develop a statewide plan for the equitable distribution of employment funds for veterans' employment services.

(c) Seek federal funding for purposes of subdivision (a).

CHAPTER 929

An act to amend Section 5051 of, and to add Section 5004.6 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 5004.6 is added to the Vehicle Code, to read:

5004.6. (a) Notwithstanding any other provision of this code, any owner of any motor vehicle eligible for registration as a street rod vehicle, as defined in subdivision (d) of Section 5051, which is operated or moved over the highways primarily for the purpose of exhibition or similar purpose pursuant to Section 5051, after compliance with the requirements for the registration of the vehicle, may, upon application in the manner and at the time prescribed by the department, be issued special identification plates for the vehicle.

(b) The special identification plates issued to a street rod vehicle shall contain the words "Street Rod" and shall run in a regular numerical series. An adhesive sticker indicating that the plates are for a street rod vehicle shall be affixed in a recess provided for it on the plates. The department shall approve the design of, and shall issue, the stickers.

(c) (1) A fee of thirty-five dollars ($35) shall be charged for the initial issuance of the special plates. These plates shall be permanent and shall not be required to be replaced.

(2) If the plates become damaged or unserviceable, replacement of the plates may be obtained from the department upon proper application and payment of a fee of thirty-five dollars ($35).

(3) Street rod vehicles are subject to the same annual registration fees as are other vehicles.

(4) The fee for the replacement of an adhesive sticker which has become damaged or unserviceable is seven dollars ($7).

(5) A fee of fifteen dollars ($15) shall be charged for the transfer of the plates to another vehicle qualifying as a street rod vehicle.

(d) All funds received by the department in payment for the plates or their replacement, after deducting the costs of the program conducted under this section, shall be deposited in the California Environmental License Plate Fund.

(e) The department is not required to implement this section unless 500 or more applications for registration pursuant to this section have been received by the department on or before January 1, 1992.

(f) A street rod vehicle is not exempt from the equipment requirements of Sections 26709, 27150, and 27600.

SEC. 2. Section 5051 of the Vehicle Code is amended to read:

5051. As used in this article, unless the context otherwise requires:

(a) "Collector" is the owner of one or more vehicles described in Section 5004 or of one or more special interest vehicles, as defined in this article, who collects, purchases, acquires, trades, or disposes of such vehicle, or parts thereof, for his or her own use, in order to preserve, restore, and maintain such vehicle for hobby or historical purposes.

(b) "Special interest vehicle" is a vehicle of any age which is unaltered from the manufacturer's original specifications and, because of its significance, such as an out-of-production vehicle, or a model of less than 2,000 sold in California in any model year, is being collected, preserved, restored, or maintained by a hobbyist as a leisure pursuit.

(c) "Parts car" is a motor vehicle which is owned by a collector to furnish parts for restoration or maintenance of a special interest vehicle or a vehicle described in Section 5004 or 5004.6, thus enabling a collector to preserve, restore, and maintain a special interest vehicle or a vehicle described in Section 5004 or 5004.6.

(d) "Street rod vehicle" is a motor vehicle, other than a motorcycle, manufactured in or prior to 1948 which has been individually modified in its body style or design, including through the use of nonoriginal or reproduction components, and which may include additional modifications to other components, including, but not limited to, the engine, drive train, suspension, and brakes in a manner that does not adversely affect its safe performance as a motor vehicle or render it unlawful for highway use.

CHAPTER 930

An act to amend Sections 51760.3, 58600, 58601, 58602, 58605, 58607, and 62000.5 of, to add Section 58608 to, and to repeal Section 58604.5 of, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 51760.3 of the Education Code is amended to read:

51760.3. The governing board of any school district offering work experience education pursuant to the authority of Section 51760 shall grant credit to pupils satisfactorily completing a work experience education program, in an amount not to exceed a total of 40 semester credits, of which no more than 10 credits may be conferred in any one semester, provided the pupil meets all of the following

requirements:

(a) At the time of enrollment, the pupil is at least 16 years of age. Pupils under the age of 16 years may receive credit for work experience education under the following conditions:

(1) The pupil is enrolled in grade 11 or a higher grade.

(2) The principal of the school in which the pupil is enrolled certifies that the pupil is in need of immediate work experience education in order to pursue employment opportunities.

(3) The principal of the school in which the pupil is enrolled certifies that there is a probability that the pupil will no longer be enrolled as a full-time pupil without being provided the opportunity to enroll in a work experience education program.

(4) The pupil's individualized education program adopted pursuant to the requirements of Part 30 (commencing with Section 56000), prescribes the type of training for which participation in a work experience program is deemed appropriate.

(b) During the course of the pupil's enrollment in the program, the pupil receives as a minimum the equivalent of one instructional period per week of classroom instruction or counseling by a certificated employee. The instruction or counseling shall be offered in sessions scheduled intermittently throughout the semester.

(c) The work experience education program meets all of the requirements of law governing these programs.

SEC. 2. Section 58600 of the Education Code is amended to read:

58600. (a) It is the intent and purpose of the Legislature that model programs be developed for intensive instruction in English or language arts, mathematics, history or social science, foreign language, physical education, visual and performing arts, or science to serve as model projects aimed at developing, within pupils, above-average competence in basic skill subjects. The programs shall be developed to serve pupils in grades 6, 7, or 8 who attend school in designated areas of disadvantage, and who otherwise would find difficulty in achieving success in high school.

It is the further intent of the Legislature that these intensive instruction programs be developed by school districts either directly, or under contract for partial or complete operation by any competent public or private agency, foundation, or corporation. It is also the intent of the Legislature that authority be granted to permit the waiver of any provision of the Education Code by the program approving agency, to the extent necessary for the development of the model programs.

It is further the intent of the Legislature that these intensive instruction programs are designed to permit their integration into the core curriculum of the schools in which they are used.

SEC. 3. Section 58601 of the Education Code is amended to read:

58601. (a) From the funds appropriated therefor by the Legislature to the State Department of Education for the purposes of this chapter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall administer this

chapter and make apportionments to school districts to meet the approved expense of the school districts incurred in developing demonstration programs in the intensive instruction in English or language arts, mathematics, history or social science, foreign language, physical education, visual and performing arts, or science, for pupils in grades 6, 7, or 8.

(b) No funding shall be apportioned on or after January 1, 1992, pursuant to this article except pursuant to an application for funding approved by the State Board of Education on or after that date.

(c) It is the intent of the Legislature that, in the 1990–91 fiscal year, new programs be created within the levels of funding appropriated by the Legislature for the purposes of this chapter during the 1990–91 fiscal year.

SEC. 4. Section 58602 of the Education Code is amended to read:

58602. The governing board of any district that maintains any two of grades 6, 7, or 8 on account of any school or schools located in any area designated by the Superintendent of Public Instruction pursuant to Section 54483, may make application to establish and operate a program under this article. The application shall be in the form, and shall contain such data and information, as the superintendent shall specify, including the manner in which demonstration programs shall include dissemination and replication activities.

SEC. 5. Section 58604.5 of the Education Code is repealed.

SEC. 6. Section 58605 of the Education Code is amended to read:

58605. The State Board of Education shall adopt regulations setting forth the standards and criteria to be used in the evaluation of applications submitted by school districts. The standards and criteria adopted by the State Board of Education, among other items, shall include a statement of specific goals to be sought in the program both in terms of pupil achievement and for the purpose of establishing a model program, and the requirements for evaluation of the program.

A project shall be approved only if it can be shown that, if successful, the cost effectiveness of the project (a) will be adaptable within the budgets of other similar school districts throughout the state, or (b) can be replicated using other existing compensatory education funds in grades 6, 7, and 8, or (c) can be replicated if additional compensatory education funds become available for use in grades 6, 7, or 8. Each project approval shall identify one of those criteria as the basis for approval.

SEC. 7. Section 58607 of the Education Code is amended to read:

58607. The Superintendent of Public Instruction, with approval of the State Board of Education, shall submit biennially an individual program evaluation report, as defined by Section 33403, to the Legislature on the implementation and evaluation of demonstration programs under this chapter, including the achievement of pupils, dissemination and replication activities, and an analysis of the costs of each demonstration project detailed in terms of the costs of design,

implementation, and operational expenses, including the degree of cost effectiveness of each project. In addition, the report shall include a description of the manner in which the State Department of Education will use the demonstration programs as models for replication.

The evaluation report shall also set forth the number of waivers authorized by the Superintendent of Public Instruction under Section 58602 and the number of pupils who participated in programs for which waivers were granted.

Not later than November 1 of each year, the Superintendent of Public Instruction shall submit to the Department of Finance and the Legislative Analyst a synopsis of available data produced for the evaluation report.

SEC. 8. Section 58608 is added to the Education Code, to read:

58608. The Superintendent of Public Instruction shall approve demonstration projects for a period not to exceed three years. Based upon a review at the end of each three-year funding cycle, a project may be extended for an additional one year based on application by a program participant.

SEC. 9. Section 62000.5 of the Education Code is amended to read:

62000.5. The demonstration programs in English or language arts, mathematics, history or social science, foreign language, physical education, visual and performing arts, or science shall sunset on June 30, 1995.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reinstate the demonstration programs that became inoperative on June 30, 1990, it is necessary that this act take effect immediately.

CHAPTER 931

An act to amend Section 11166.5 of the Penal Code, relating to crimes.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her

employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, and youth organizations who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers; or any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who

treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars ($1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

SEC. 2. 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 932

An act to amend Sections 39608, 43013, 43018, and 43830 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 39608 of the Health and Safety Code is amended to read:

39608. (a) The state board, in consultation with the districts, shall identify, pursuant to subdivision (e) of Section 39607, and classify each air basin which is in attainment and each air basin which is in nonattainment for any state ambient air quality standard. This identification and classification shall be made on a pollutant-by-pollutant basis. Where the state board finds that data is not sufficient to determine the attainment or nonattainment status for an air basin, the state board shall identify the air basin as unclassified.

(b) The state board may assign an attainment, nonattainment, or unclassified designation to one or more areas within any air basin unless the state board finds and determines that the pollutant for which the designation applies affects the entire region or is produced by emission sources throughout the region.

(c) Designations made by the state board shall be reviewed annually and updated as new information becomes available.

SEC. 2. Section 43013 of the Health and Safety Code is amended to read:

43013 (a) The state board may adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the state board has found to be necessary, cost-effective, and technologically feasible to carry out the purposes of this division.

(b) The state board may, consistent with subdivision (a), adopt standards and regulations for light-duty and heavy-duty motor vehicles; medium-duty motor vehicles, as determined and specified by the state board; and off-road and nonvehicle engine categories, including off-highway motorcycles; off-highway vehicles; construction equipment; farm equipment; utility engines; locomotives; and, to the extent permitted by federal law, marine vessels.

(c) Prior to adopting standards and regulations for farm equipment, the state board shall hold a public hearing and find and determine that the standards and regulations are necessary, cost-effective, and technologically feasible. The state board shall also consider the technological effects of emission control standards on

the cost, fuel consumption, and performance characteristics of mobile farm equipment.

(d) Notwithstanding subdivision (b), the state board shall not adopt any standard or regulation affecting locomotives until the final study required under Section 5 of Chapter 1326 of the Statutes of 1987 has been completed and submitted to the Governor and Legislature.

(e) Prior to adopting standards and regulations pursuant to this section, the state board shall consider the effect of the standards and regulations on the economy of the state, including, but not limited to, motor vehicle fuel efficiency.

(f) 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, the existing law.

SEC. 3. Section 43018 of the Health and Safety Code is amended to read:

43018. (a) The state board shall endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date.

(b) Not later than January 1, 1992, the state board shall take whatever actions are necessary, cost-effective, and technologically feasible in order to achieve, not later than December 31, 2000, a reduction in the actual emissions of reactive organic gases of at least 55 percent, a reduction in emissions of oxides of nitrogen of at least 15 percent from motor vehicles. These reductions in emissions shall be calculated with respect to the 1987 baseline year. The state board also shall take action to achieve the maximum feasible reductions in particulates, carbon monoxide, and toxic air contaminants from vehicular sources.

(c) In carrying out this section, the state board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including, but not limited to, all of the following:

(1) Reductions in motor vehicle exhaust and evaporative emissions.

(2) Reductions in emissions from in-use emissions from motor vehicles through improvements in emission system durability and performance.

(3) Requiring the purchase of low-emission vehicles by state fleet operators.

(4) Specification of vehicular fuel composition.

(d) In order to accomplish the purposes of this division, and to ensure timely approval of the district's plans for attainment of the state air quality standards by the state board, the state board shall adopt the following schedule for workshops and hearings to consider the adoption of the standards and regulations required pursuant to this section:

(1) Workshops on the adoption of vehicular fuel specifications for aromatic content, diesel fuel quality, light-duty vehicle exhaust

emission standards, and revisions to the standards for new vehicle certification and durability to reflect current driving conditions and useful vehicle life shall be held not later than March 31, 1989. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than November 15, 1989.

(2) Notwithstanding Section 43830, workshops on the adoption of regulations governing gasoline Reid vapor pressure, and standards for heavy-duty and medium-duty vehicle emissions, shall be held not later than January 31, 1990. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than November 15, 1990.

(3) Workshops on the adoption of regulations governing detergent content, emissions from off-highway vehicles, vehicle fuel composition, emissions from construction equipment and farm equipment, motorcycles, locomotives, utility engines, and to the extent permitted by federal law, marine vessels, shall be held not later than January 31, 1991. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than November 15, 1991.

(e) Prior to adopting standards and regulations pursuant to this section, the state board shall consider the effect of the standards and regulations on the economy of the state, including, but not limited to, motor vehicle fuel efficiency.

(f) 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, the existing law.

SEC. 4. Section 43830 of the Health and Safety Code is amended to read:

43830. (a) The state board shall establish, by regulation, maximum standards for the volatility of gasoline at or below nine pounds per square inch Reid vapor pressure as determined by the American Society for Testing and Materials, Test D 323-58, or by an appropriate test determined by the state board, for gasoline sold in this state.

(b) The state board, in adopting the regulations, shall give full consideration to topography and climatic conditions and may provide that the standards imposed thereby shall apply in those areas which the state board determines necessary in order to carry out the purposes of this division.

(c) Notwithstanding any other law or regulation, until October 1, 1993, any blend of gasoline of at least 10 percent ethyl alcohol shall not result in a violation of any regulation adopted by the state board pursuant to this section unless the volatility of the gasoline used in the blend exceeds the applicable standard of the state board.

(d) For the purposes of this section, "ethyl alcohol" (also known as ethanol) means fuel that meets all of the following requirements:

(1) It is produced from agricultural commodities, renewable resources, or coal.

(2) It is rendered unsuitable for human consumption at the time of its manufacture or immediately thereafter.

(e) For the purposes of determining the percentage of ethyl alcohol contained in gasoline, the volume of alcohol includes the volume of any denaturant approved for that purpose by the United States Bureau of Alcohol, Tobacco and Firearms, provided these denaturants do not exceed 5 percent of the volume of alcohol (including denaturants).

CHAPTER 933

An act to add Section 33420.1 to the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 33420.1 is added to the Health and Safety Code, to read:

33420.1. Within a project area, for any project undertaken by an agency for building rehabilitation or alteration in construction, an agency may take those actions which the agency determines necessary and which is consistent with local, state, and federal law, to provide for seismic retrofits as follows:

(a) For unreinforced masonry buildings, to meet the requirements of Chapter 1 of the Appendix of the Uniform Code for Building Conservation of the International Conference of Building Officials.

(b) For any buildings that qualify as "historical property" under Section 37602, to meet the requirements of the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13).

(c) For buildings other than unreinforced masonry buildings and historical properties, to meet the requirements of the most current edition of the Uniform Building Code of the International Conference of Building Officials.

If an agency undertakes seismic retrofits and proposes to add new territory to the project area, to increase either the limitation on the number of dollars to be allocated to the redevelopment agency or the time limit on the establishing of loans, advances, and indebtedness established pursuant to paragraphs (1) and (2) of Section 33333.2, to lengthen the period during which the redevelopment plan is effective, to merge project areas, or to add significant additional capital improvement projects, as determined by the agency, the agency shall amend its redevelopment plan and follow the same procedure, and the legislative body is subject to the same restrictions,

as provided for in Article 4 (commencing with Section 33330) for the adoption of a plan.

CHAPTER 934

An act to amend Section 831.5 of the Government Code, relating to public land trusts.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. It is the intent of the Legislature, in amending subdivisions (b) and (c) of Section 831.5 of the Government Code, to clarify that public land trusts which meet the requirements of subdivision (b) of Section 831.5 of the Government Code, and their officers, authorized agents, and employees, benefit from the immunity provided by Section 831.25 of the Government Code.

SEC. 2. Section 831.5 of the Government Code is amended to read:

831.5. (a) The Legislature declares that innovative public access programs, such as agreements with public land trusts, can provide effective and responsible alternatives to costly public acquisition programs. The Legislature therefore declares that it is beneficial to the people of this state to encourage private nonprofit entities such as public land trusts to carry out programs that preserve open space or increase opportunities for the public to enjoy access to and use of natural resources if the programs are consistent (1) with public safety, (2) with the protection of the resources, and (3) with public and private rights.

(b) For the purposes of Sections 831.2, 831.25, 831.4, and 831.7, "public entity" includes a public land trust which meets all of the following conditions:

(1) It is a nonprofit organization existing under the provisions of Section 501(c) of the United States Internal Revenue Code.

(2) It has specifically set forth in its articles of incorporation, as among its principal charitable purposes, the conservation of land for public access, agricultural, scientific, historical, educational, recreational, scenic, or open-space opportunities.

(3) It has entered into an agreement with the State Coastal Conservancy for lands located within the coastal zone, as defined in Section 31006 of the Public Resources Code, with the California Tahoe Conservancy or its designee for lands located within the Lake Tahoe region, as defined in subdivision (c) of Section 66953 of the Government Code, or with the State Public Works Board or its designee for lands not located within the coastal zone or the Lake Tahoe region, on such terms and conditions as are mutually

agreeable, requiring the public land trust to hold the lands or, where appropriate, to provide nondiscriminatory public access consistent with the protection and conservation of either coastal or other natural resources, or both. The conservancy or the board, as appropriate, shall periodically review the agreement and determine whether the public land trust is in compliance with the terms and conditions. In the event the conservancy or the board determines that the public land trust is not in substantial compliance with the agreement, the conservancy or the board shall cancel the agreement, and the provisions of Sections 831.2, 831.25, 831.4, and 831.7 shall no longer apply with regard to that public land trust.

(c) For the purposes of Sections 831.2, 831.25, 831.4, and 831.7, "public employee" includes an officer, authorized agent, or employee of any public land trust which is a public entity.

CHAPTER 935

An act to amend Sections 4359 and 7020 of the Civil Code, to amend Sections 412.21 and 546 of, and to add Section 545.5 to, the Code of Civil Procedure, and to amend Section 136.2 of the Penal Code, relating to the courts.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 4359 of the Civil Code is amended to read:

4359. (a) During the pendency of any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the superior court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring him or her to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures; (2) enjoining any party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party, and, in the discretion of the court, upon a showing of good cause, other named family and household members; (3) excluding one party from the family dwelling or from the dwelling of the other, for the period of time and upon the conditions as the court may determine, regardless of which party holds legal or equitable title, or is the lessee of the dwelling, upon a showing that the party to be excluded has

assaulted or threatens to assault the other party or any other person under the care, custody, or control of the other party, or any minor child of the parties or of the other party, and that physical or emotional harm would otherwise result to the other party or any person under the care, custody, or control of the other party, or to any minor child of the parties or of the other party as provided in Section 5102; (4) determining the temporary custody of any minor children of the marriage, and the right of a party to visit the minor children upon the conditions as the court may determine; (5) determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances coming due during the pendency of the order; and (6) enjoining a party from specified behavior which the court determines is necessary to effectuate orders under paragraph (2) or (3).

A mutual restraining order specified in paragraph (2) may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence specified in paragraph (2).

Any order issued pursuant to this section shall state on its face the date of expiration of the order.

The Judicial Council shall promulgate forms and instructions for applications for orders and orders granted pursuant to this section.

(b) The court shall order the party who obtained the order or the attorney for that party to deliver or the clerk to mail a copy of any order, or extension, modification or termination thereof, granted pursuant to subdivision (a), 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 party or the attorney for the party, having jurisdiction over the residence of the party and other locations where the court determines that acts of domestic violence against the party 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) to any law enforcement officer responding to the scene of reported domestic violence.

Notwithstanding the foregoing, an order issued pursuant to this section is enforceable in any place in this state. However, an order issued pursuant to this section is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.

(c) Each order granted pursuant to this section shall state on its face that it is enforceable in any place in this state by any law enforcement agency that has received a mailed notice as provided by subdivision (b), by any other law enforcement agency that has received the order, or by any officer who has been shown the order.

Any willful and knowing violation of any order granted pursuant to paragraph (2), (3) or (6) of subdivision (a) shall be a misdemeanor punishable under Section 273.6 of the Penal Code.

(d) The temporary restraining order specified in paragraph (2) of subdivision (a) shall state on its face a notice in substantially the following form:

"NOTICE TO PETITIONER/RESPONDENT: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

(e) Any restraining order against domestic violence issued pursuant to paragraph (2), (3), or (6) of subdivision (a) may, upon the request of the moving party, be served upon the responding party 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. 2. Section 7020 of the Civil Code is amended to read:

7020. (a) During the pendency of any proceeding under this part, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the superior court may issue ex parte orders (1) enjoining any party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party or the minor child; (2) excluding one party from the dwelling of the party who has care, custody and control of the child upon showing that the party to be excluded has assaulted or threatens to assault the other party or the minor child, and that physical or emotional harm would otherwise result to the party or the minor child; (3) enjoining a party from specified behavior which the court determines is necessary to effectuate orders under paragraph (1) or (2); and (4) determining the temporary custody of any minor child who is the subject of a proceeding under this part and the right of a party to visit the minor child upon the conditions as the court may determine. 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 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.

(b) The court may issue upon notice and a hearing any of the orders set forth in subdivision (a). After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the party who has care, custody, and control of the minor child upon a showing only that physical or emotional harm would otherwise result to the party

or the minor child. Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, except as provided in Section 7021, unless otherwise terminated by the court, extended by mutual consent of the parties or extended by further order of the court on the motion of any party. Upon notice and a hearing, the court may also issue (1) an order that restitution be paid to the plaintiff for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing incurred as a direct result of the abuse or any actual physical injuries sustained therefrom, (2) an order that restitution be paid by the plaintiff for out-of-pocket expenses incurred by a party as a result of any order issued ex parte which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order, or (3) an order requiring the defendant to pay any public or private agency for the reasonable cost of providing services to the plaintiff required as a direct result of the abuse inflicted by the defendant or any injuries sustained therefrom. An order for restitution under this section shall not include damages for pain and suffering.

(c) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(d) The temporary restraining order shall set forth on its face a notice in substantially the following form:

"NOTICE TO DEFENDANT: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

(e) The court shall order the party who obtained the order or the attorney for the party to deliver or the clerk 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 party or the attorney for the party, having jurisdiction over the residence of the party who has care, custody and control of the minor child and such other locations where the court determines that acts of domestic violence against the party and the minor child 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.

(f) A mutual restraining order specified in paragraph (1) of subdivision (a) may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence specified in paragraph (1) of subdivision (a).

(g) Any restraining order against domestic violence issued pursuant to paragraph (1), (2), or (3) of subdivision (a) may, upon the request of the moving party, be served upon the responding

party 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.

(h) 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 412.21 of the Code of Civil Procedure is amended to read:

412.21. (a) Commencing on July 1, 1990, in an action for dissolution of marriage, legal separation, or annulment of marriage, the summons shall additionally contain temporary restraining orders set forth in this section. Upon the filing of a petition for dissolution of marriage, legal separation or annulment of marriage by the petitioner and issuance of the summons and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary restraining order shall be in effect against both parties until the final decree is entered or the petition is dismissed, or until further order of the court:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days prior to incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party. However, nothing in the restraining order shall preclude the parties from using community property to pay reasonable attorney's fees in order to retain legal counsel in the action.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children.

The restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to the provisions of this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.

The summons shall state on its face that the order thereon is enforceable in any place in this state by any law enforcement agency

that has received mailed notice thereof, by any other law enforcement agency that has received the order, or by any officer who has been shown the order. Any willful and knowing violation of the order by removing a child from the state without the written consent of the other party or an order of the court shall be punishable as provided in Section 278.5 of the Penal Code. Any willful and knowing violation of any of the other orders in the summons shall be punishable as provided in Section 273.6 of the Penal Code.

Nothing in this subdivision shall preclude either party from applying to the court for further temporary orders, an expanded temporary ex parte order, or modification or revocation of the order.

The automatic granting of these ex parte orders is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.

(b) In an action under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, the summons shall additionally contain the temporary restraining orders set forth in this subdivision. Upon the filing of a petition hereunder by petitioner and issuance of the summons and upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary restraining order shall be in effect against the parties until the final decree is entered or the petition is dismissed, or until further order of the court restraining all parties from removing from the state any minor child or children for whom the action seeks to establish a parent and child relationship, without the prior written consent of the other party or an order of the court.

The restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to the provisions of this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.

The summons shall state on its face that the order thereon is enforceable in any place in this state by any law enforcement agency that has received mailed notice thereof, by any other law enforcement agency that has received the order, or by any officer who has been shown the order. Any willful and knowing violation of the order by removing a child from the state without the written consent of the other party or an order of the court shall be punishable as provided in Section 278.5 of the Penal Code. Any willful and knowing violation of any of the other orders in the summons shall be punishable as provided in Section 273.6 of the Penal Code.

Nothing in this subdivision shall preclude either party from applying to the court for further temporary orders, an expanded temporary ex parte order, or modification or revocation of the order.

The automatic granting of these ex parte orders is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.

SEC. 4. Section 545.5 is added to the Code of Civil Procedure, to

read:

545.5. A mutual restraining order enjoining the parties from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party, and, in the discretion of the court upon a showing of good cause, other named family and household members, may only be issued if both parties personally appear and each party presents evidence of abuse or domestic violence as defined in Section 542.

SEC. 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 temporary restraining order shall set forth on its face a notice in substantially the following form:

"NOTICE TO DEFENDANT: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

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. 6. 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.

(g) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(h) On or before July 1, 1991, the Judicial Council shall adopt forms for orders under this section.

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 936

An act to amend Section 12701 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 12701 of the Business and Professions Code is amended to read:

12701. The following persons are not weighmasters:

(a) Retailers weighing, measuring, or counting commodities for sale by them in retail stores in the presence of, and directly to, consumers.

(b) Except for persons subject to Section 12730, producers of agricultural commodities or livestock, who weigh commodities produced or purchased by them or by their producer neighbors,

when no charge is made for the weighing, or when no signed or initialed statement or memorandum is issued of the weight upon which a purchase or sale of the commodity is based.

(c) Common carriers issuing bills of lading on which are recorded, for the purpose of computing transportation charges, the weights of commodities offered for transportation, including carriers of household goods when transporting shipments weighing less than 1,000 pounds.

(d) Milk samplers and weighers licensed pursuant to Article 8 (commencing with Section 35161) of Chapter 12 of Part 1 of Division 15 of the Food and Agricultural Code, when performing the duties for which they are licensed.

(e) Persons who measure the amount of oil, gas, or other fuels for purposes of royalty computation and payment, or other operations of fuel and oil companies and their retail outlets.

(f) Newspaper publishers weighing or counting newspapers for sale to dealers or distributors.

(g) Textile maintenance establishments weighing, counting, or measuring any articles in connection with the business of those establishments.

(h) Garbage and refuse disposal districts operating pursuant to Chapter 1.5 (commencing with Section 4170) of Part 2 of Division 5 of the Health and Safety Code, county sanitation districts operating pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code, and solid waste facilities, as defined in Section 40194 of the Public Resources Code.

(i) Persons who purchase scrap metal or salvage materials pursuant to a nonprofit recycling program.

(j) Pest control operators licensed pursuant to Chapter 4 (commencing with Section 11701) of Division 6 of the Food and Agricultural Code.

(k) Retailers, or recycling centers established solely for the redemption of empty beverage containers, as that phrase is defined in Section 14512 of the Public Resources Code, who are weighing, measuring, or counting salvage or returnable materials for purchase or redemption by them in retail stores, or, in the case of recycling centers, on the retail store premises or on a parking lot immediately adjacent to a retail store which is used for the purpose of parking by the store customers, directly from and in the presence of the seller. "Retailer" means an entity which derives 90 percent or more of its income from the sale of small quantities of food or nonfood items, or both, directly to consumers. "Salvage materials" means used paper products and used containers made of aluminum, tin, glass, or plastic.

(*l*) Any log scaler who performs log scaling functions, except weighing, as defined in the United States Forest Service Handbook, Supplement No. 4 of March 1987.

CHAPTER 937

An act to repeal Section 39461 of the Food and Agricultural Code, relating to dairy products.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 39461 of the Food and Agricultural Code is repealed.

CHAPTER 938

An act to amend Section 35782 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 35782 of the Vehicle Code is amended to read:

35782. (a) The Department of Transportation or a local authority may issue or withhold the permit at its discretion, or, if the permit is issued, do any of the following when necessary to protect against injury to the road, foundations, surfaces, or structures:

(1) Limit the number of trips.

(2) Establish seasonal or other time limitations within which the vehicle or vehicles described may be operated on the highways indicated.

(3) Otherwise limit or prescribe conditions of operation of the vehicle.

(b) The Department of Transportation or a local authority may not require the posting of a bond as a condition of the issuance of a permit, except that a requirement of extra insurance or other financial security may be imposed as a condition for a permit for unusually large or heavy loads which pose a substantial risk to public facilities.

(c) Except as provided in subdivision (b), the Department of Transportation or a local authority may not require proof of financial responsibility in an amount greater than that required for compliance with Section 16500.5 as a condition of the permit, and shall accept evidence of financial responsibility which complies with Section 16028.

CHAPTER 939

An act to amend Section 3600 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 3600 of the Labor Code is amended to read:

3600. (a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence.

(4) Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee. As used in this paragraph, "controlled substance" shall have the same meaning as prescribed in Section 11007 of the Health and Safety Code.

(5) Where the injury is not intentionally self-inflicted.

(6) Where the employee has not willfully and deliberately caused his or her own death.

(7) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

(8) Where the injury is not caused by the commission of a felonious act by the injured employee, for which he or she has been convicted.

(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment. The administrative director shall promulgate reasonable rules and regulations requiring employers to post and keep posted in a conspicuous place or places a notice advising employees of the provisions of this subdivision. Failure of the employer to post the notice shall not constitute an expression of intent to waive the

provisions of this subdivision.

(b) Where an employee, or his or her dependents, receives the compensation provided by this division and secures a judgment for, or settlement of, civil damages pursuant to those specific exemptions to the employee's exclusive remedy set forth in subdivision (b) of Section 3602 and Section 4558, the compensation paid under this division shall be credited against the judgment or settlement, and the employer shall be relieved from the obligation to pay further compensation to, or on behalf of, the employee or his or her dependents up to the net amount of the judgment or settlement received by the employee or his or her heirs, or that portion of the judgment as has been satisfied.

CHAPTER 940

An act to amend Sections 1267.5 and 1417.2 of, and to add Sections 1327.1, 1327.2, and 1327.3 to, the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 1267.5 of the Health and Safety Code is amended to read:

1267.5. (a) (1) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of 5 percent or more in the applicant corporation or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of, or has held a beneficial ownership interest of 5 percent or more in, any other skilled nursing facility or intermediate care facility or in any community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of this division, the applicant shall disclose the relationship to the state department, including the name and current or last address of the health facility or community care facility and the date such relationship commenced and, if applicable, the date it was terminated.

(3) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5

percent or more in the management company shall be disclosed to the state department. This provision shall not apply if the management company has submitted an application for licensure with the state department and has complied with paragraph (1).

(4) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization of the subsidiary and the names and addresses of any officer or director of the parent organization.

The information required by this subdivision shall be provided to the state department upon initial application for licensure, and changes in the information shall be provided to the state department on an annual basis. Failure to comply with this section may result in action to revoke or deny a license. The information required by this section shall be made available to the public upon request, and shall be included in the public file of the facility.

(b) On and after January 1, 1990, no person may acquire a beneficial interest of 5 percent or more in any corporation or partnership licensed to operate a skilled nursing facility or intermediate care facility, or in any management company under contract with a licensee of a skilled nursing facility or intermediate care facility, nor may any person become an officer or director of, or general partner in, such a corporation, partnership, or management company without the prior written approval of the state department. Each application for departmental approval pursuant to this subdivision shall include the information specified in subdivision (a) as regards the person for whom the application is made.

If the state department fails to approve or disapprove the application within 30 days after receipt thereof, the application shall be deemed approved.

(c) The state department may deny approval of a license application or of an application for approval under subdivision (b) if a person named in the application, as required by this section, was an officer, director, general partner, or owner of a 5-percent or greater beneficial interest in a licensee of, or in a management company under contract with a licensee of, a skilled nursing facility, intermediate care facility, community care facility, or residential care facility for the elderly at a time when one or more violations of law were committed therein which resulted in suspension or revocation of its license, or at a time when a court-ordered receiver was appointed pursuant to Section 1327. However, the prior suspension, revocation, or court-ordered receivership of a license shall not be grounds for denial of the application if the applicant shows to the satisfaction of the state department (1) that the person in question took every reasonably available action to prevent the violation or violations which resulted in the disciplinary action and (2) that he or she took every reasonably available action to correct the violation or violations once he or she knew, or with the exercise of reasonable diligence should have known of, the violation or violations.

(d) No application shall be denied pursuant to this section until the state department first (1) provides the applicant with notice in writing of grounds for the proposed denial of application, and (2) affords the applicant an opportunity to submit additional documentary evidence in opposition to the proposed denial.

(e) Nothing in this section shall cause any individual to be personally liable for any civil penalty assessed pursuant to Chapter 2.4 (commencing with Section 1417) of this division or create any new criminal or civil liability contrary to general laws limiting such liability.

(f) This section shall not apply to a bank, trust company, financial institution, title insurer, controlled escrow company, or underwritten title company to which a license is issued in a fiduciary capacity.

(g) As used in this section, "person" has the same meaning as specified in Section 19.

(h) This section shall not apply to the directors of a nonprofit corporation exempt from taxation under Section 23701d of the Revenue and Taxation Code which operates a skilled nursing facility or intermediate care facility in conjunction with a licensed residential facility, where the directors serve without financial compensation and are not compensated by the nonprofit corporation in any other capacity.

SEC. 2. Section 1327.1 is added to the Health and Safety Code, to read:

1327.1. The state department shall investigate within 30 days of receipt of a complaint alleging that circumstances permitting a petition for receivership under Section 1327 exist in a long-term health care facility. The result of the investigation shall be documented by the state department in the facility file.

SEC. 3. Section 1327.2 is added to the Health and Safety Code, to read:

1327.2. In the event that the state department proceeds with a receivership petition, the state department shall hold an informational meeting in the affected community for residents, family members, and interested parties.

SEC. 4. Section 1327.3 is added to the Health and Safety Code, to read:

1327.3. Subdivision (b) of Section 1327 shall not be construed to prohibit the state department from including on its list of qualified receivers a consortium of community agencies that includes one or more licensed nursing home administrators, as long as the consortium is established as a legal entity.

The court may approve receivership arrangements where more than one individual shares receivership duties, as long as one licensed nursing home administrator or other responsible person or entity is the legally appointed receiver.

SEC. 4.5. Section 1417.2 of the Health and Safety Code, as added by Chapter 445 of the Statutes of 1990, is amended to read:

1417.2. (a) Notwithstanding Section 1428, moneys collected as a result of civil penalties imposed under this chapter shall be deposited into an account which is hereby established in the Special Deposit Fund under the provisions of Section 16370 of the Government Code. This account is entitled the Health Facilities Citation Penalties Account and shall, upon appropriation by the Legislature, be used for the protection of health or property of residents of long-term health care facilities, including, but not limited to, the following:

(1) Relocation expenses incurred by the state department, in the event of a facility closure.

(2) Maintenance of facility operation pending correction of deficiencies or closure, such as temporary management or receivership, in the event that the revenues of the facility are insufficient.

(3) Reimbursing residents for personal funds lost. In the event that the loss is a result of the actions of a long-term health care facility or its employees, the revenues of the facility shall first be used.

(4) The costs associated with informational meetings required under Section 1327.2.

(b) Notwithstanding subdivision (a), the balance in the Health Facilities Citation Penalties Account shall not, at any time, exceed one million dollars ($1,000,000).

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 941

An act to add Section 14617 to the Government Code, relating to campus lighting.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 14617 is added to the Government Code, to read:

14617. The office of the State Architect and the California Building Standards Commission, in consultation with offices and divisions within the Department of General Services, including the

California State Police Division, shall jointly adopt regulations in Title 24 of the California Code of Regulations to establish a standard of lighting for parking lots at the University of California, California State University, and Calfornia Community Colleges. This standard shall be adopted and submitted to the California Building Standards Commission for approval on or before June 30, 1991, and published by the commission in the 1992 triennial publication of the California Building Code.

The office of the State Architect shall also adopt regulations in Title 24 of the California Code of Regulations to establish the Illumination Engineering Society Handbook recommendations as the standard lighting level for primary campus walkways used at night at the University of California, California State University, and California Community Colleges. These regulations shall be adopted and submitted to the California Building Standards Commission for approval on or before June 30, 1991, and published by the commission in the 1992 triennial publication of the California Building Code.

This section shall not apply to the University of California unless the Regents of the University of California, by resolution, makes it applicable.

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 942

An act to amend Section 653w of the Penal Code, relating to crimes.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 653w of the Penal Code is amended to read:

653w. (a) A person is guilty of failure to disclose the origin of a recording or audiovisual work when, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or

rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover box or jacket of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

As used in this section, "recording" means any tangible medium upon which information or sounds are recorded or otherwise stored, including any phonograph record, disc, tape, audio cassette, wire, film, or other medium on which information or sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work.

As used in this section, "audiovisual works" are the physical embodiment of works that consist of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects such as films or tapes on which the works are embodied.

(b) Any person who has been convicted of a violation of subdivision (a) shall be punished as follows:

(1) If the offense involves the advertising, offer for sale or resale, selling, rental, manufacturing, or possession for these purposes, of at least 1,000 articles of an audio recording or 100 articles of an audiovisual work described in subdivision (a), shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars ($250,000), or by both.

(2) Any other violation of subdivision (a) not described in paragraph (1), shall, upon a first offense, be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both.

(3) A second or subsequent conviction under subdivision (a) not described in paragraph (1), shall be punished by imprisonment in the county jail not to exceed one year or in the state prison or by a fine not to exceed one hundred thousand dollars ($100,000), or by both.

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 943

An act to amend, repeal, and add Sections 483.010 and 483.015 of the Code of Civil Procedure, relating to civil remedies.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 483.010 of the Code of Civil Procedure is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty and any statutory, common law, or equitable lien on real property, but excluding any security interest in fixtures subject to Division 9 (commencing with Section 9101) of the Commercial Code). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount to be secured by the attachment shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

(e) This section shall remain in effect only until January 1, 1996, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 1.5. Section 483.010 is added to the Code of Civil Procedure, to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real or personal property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty, any security interest subject to Division 9 (commencing with Section 9101) of the Commercial Code, and any statutory, common law, or equitable lien). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount for which the attachment may issue shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

(e) This section shall become operative on January 1, 1996.

SEC. 2. Section 483.015 of the Code of Civil Procedure is amended to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the

defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(4) The value of any security interest in the property of the defendant held by the plaintiff to secure the defendant's indebtedness claimed by the plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or any person to whom the security interest was transferred.

(c) This section shall remain in effect only until January 1, 1996, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2.5. Section 483.015 is added to the Code of Civil Procedure, to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(c) This section shall become operative on January 1, 1996.

SEC. 3. The California Law Revision Commission shall study the impacts of the changes in Sections 483.010 and 483.015 of the Code of Civil Procedure made by Sections 1 and 2 of this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994.

CHAPTER 944

An act to add Section 112 to the Water Code, relating to water resources.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990.]

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

SECTION 1. The Legislature hereby finds and declares that, in order to maximize the beneficial uses of the waters of the state, it is necessary to improve the efficiency of reverse osmosis water purification devices installed for use in residential units.

SEC. 2. Section 112 is added to the Water Code, to read:

112. (a) The efficiency of a reverse osmosis water treatment device means the percentage of water which passes through the water treatment device that is available for subsequent domestic use and which is not discharged directly from the device to the waste disposal system of the residence where the device is used.

(b) Notwithstanding any other provision of law, after January 1, 1991, no reverse osmosis water treatment device shall be sold, installed, or rented, for residential use, including any general domestic purposes such as drinking, cleaning, washing, or sanitation, unless the device is equipped with an automatic waste shutoff device or, through other equipment design specifications, achieves or exceeds equal or greater water savings than would occur with an automatic shutoff device.

(c) Effective January 1, 1993, any reverse osmosis water treatment device sold, installed, rented, or under service contract prior to January 1, 1991, for residential use shall be retrofit with an automatic waste shutoff device, or, through other equipment design specifications, achieve or exceed equal or greater water savings than would occur with an automatic shutoff device.

CHAPTER 945

An act to add Section 1423.5 to the Health and Safety Code, relating to long-term health care.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The State Department of Health Services licenses and

regulates long-term health care facilities and issues citations to long-term health care facilities for their failure to comply with certain statutory provisions, rules, or regulations relating to the operation or maintenance of the facility.

(2) The State Department of Health Services, by regulation, requires long-term health care facilities to notify a patient's physician and surgeon in certain circumstances, including when there has been a sudden or marked adverse, or both, change in the patient's condition.

(3) The State Department of Health Services has not defined what constitutes a sudden or marked adverse, or both, change in the patient's condition, and the vagueness has resulted in long-term health care facilities being cited for violating the notification requirement in circumstances where the facilities do not believe that there have been sudden or marked adverse, or both, changes in the patient's condition.

(4) The lack of definition as described in paragraph (3) has resulted in long-term health care facilities excessively contacting a physician and surgeon at every slight change in a patient's condition, even for changes which do not warrant a physician and surgeon's intervention, in order to avoid being cited for a technical violation of the regulation.

(b) It is the intent of the Legislature in enacting this act to require the State Department of Health Services to define what constitutes a sudden or marked adverse, or both, change in the patient's condition.

SEC. 2. Section 1423.5 is added to the Health and Safety Code, to read:

1423.5. The state department shall define, by regulation, on or before June 30, 1992, the term "sudden or marked adverse, or both, change in the patient's condition" as it applies to the requirement of a long-term health care facility, imposed by regulation adopted by the state department, to notify a patient's physician and surgeon when there has been a sudden or marked adverse, or both, change in the patient's condition. Prior to adopting a regulation defining "sudden or marked adverse, or both, change in the patient's condition" for this purpose, the state department shall consult with representatives of all of the following:

(a) Long-term health care facilities.

(b) Physicians and surgeons.

(c) Registered nurses.

(d) Consumer advocates.

CHAPTER 946

An act to add Section 26110 to the Government Code, relating to county advertising.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 26110 is added to the Government Code, to read:

26110. (a) A county board of supervisors may, by ordinance, provide for the following commercial uses of county property listed in subdivision (b) provided that: (1) a county of the first class develops a viable marketing plan, and (2) all other counties comply with all of the following:

(1) Consults with a qualified licensing agent to develop a viable marketing plan. The plan shall identify marketing and licensing opportunities, including, but not limited to, the sale of advertising space, and the provision of nonexclusive and exclusive designation promotions. The plan shall outline a method for evaluating both the revenue potential of proposed contracts, and the future revenue impact of a proposed contract. The plan shall establish procedures for comparing the revenue potential of alternative contracts, and for auditing a licensee's performance. The plan shall detail short-term and long-term revenue goals.

(2) Adopts by resolution a county marketing plan.

(3) Annually reviews the marketing plan and reviews the performance of contracts. The board of supervisors shall by resolution adopt the findings of the annual review.

(b) A county board of supervisors may provide for the following commercial uses of county property consistent with the county marketing plan:

(1) The licensing, for a fee or other consideration, of the private commercial use of a county name, logo, or other intellectual property, or the depiction of county property.

(2) The donation of facilities or informational brochures, messages, or broadcasts which publicize acknowledgment of a sponsor's financial assistance.

(c) Agreements to confer any of the rights enumerated in this section and acknowledgment of donated moneys, goods, or services may be made in the manner and under terms and conditions approved by the supervisors. Any agreement which a county seeks to enter into pursuant to this section shall be presented at a duly noticed public hearing of a legislative body, as that term is defined by Sections 54952.2 and 54952.3, in strict compliance with the requirements of Section 54954.2.

(d) Nothing in this section shall be construed to empower a

county to enter into any commercial arrangement under which the logo of a county or any of its departments can be reproduced and distributed in a manner to enable impersonation of a county official or safety employee.

(e) Nothing in this section is intended to vest in any person the right to enter into a marketing agreement with a county.

CHAPTER 947

An act to amend Section 3361 of, to add Sections 14768 and 18457 to, to add Division 1.8 (commencing with Section 4990) to, and to repeal Section 14757 of, the Financial Code, relating to financial institutions.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 3361 of the Financial Code is amended to read:

3361. Any officer, director, trustee, employee, or agent of any bank in this state, who abstracts or willfully misapplies any of the money, funds, or property of the bank, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the bank. Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for such an offense.

SEC. 2. Division 1.8 (commencing with Section 4990) is added to the Financial Code, to read:

DIVISION 1.8. PERSONS CONNECTED WITH FINANCIAL INSTITUTIONS

4990. (a) Any person convicted of a felony violation of any of the provisions specified in subdivision (b) shall not serve in any capacity as a director or officer or in any other position involving any management duties with a financial institution in this state with accounts insured by an agency or instrumentality of the United States or a private share insurance or guaranty arrangement. This subdivision does not, however, apply to any director or officer of a financial institution, or to persons serving in managerial positions for financial institutions, whose office or employment with a financial institution commenced, and whose felony conviction occurred, prior to January 1, 1991.

(b) Subdivision (a) applies to felony convictions of offenses specified in Chapter 18 (commencing with Section 3350) of Division

1, Article 4 (commencing with Section 5300) of Chapter 1 of Division 2, Article 8 (commencing with Section 14750) of Chapter 4 of Division 5, and Chapter 6 (commencing with Section 18435) of Division 7. Subdivision (a) also applies to felony convictions of offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

(c) On and after January 1, 1991, any person who seeks employment by, or a controlling interest in, a financial institution specified in subdivision (a) shall, as a condition to obtaining that employment or controlling interest, permit the financial institution, its regulatory agency, or both to have access to that person's state summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of a felony offense specified in subdivision (b) or any theft offense.

(d) Any state summary criminal history information obtained pursuant to this subdivision shall be kept confidential and no recipient under this subdivision shall disclose the contents other than for the purpose of determining eligibility for employment by, or acquisition of a controlling interest in, a financial institution specified in subdivision (a).

(e) The authority granted by this section to the Superintendent of Banks and other regulatory agencies shall be in addition to any other authority granted by law to obtain information about the background of any person. Nothing in this section shall be construed to limit any authority of the Superintendent of Banks or any regulatory agency otherwise provided by law.

4991. (a) In response to a request by another bank, savings association, credit union, or any other financial institution it is not unlawful for a bank, savings association, credit union, or any other financial institution to provide a written employment reference which advises of the applicants' involvement in a theft, embezzlement, misappropriation, or other defalcation which has been reported to state or federal authorities pursuant to state or federal banking or financial institutions law. In order for the immunity provided in subdivision (b) to apply, a copy of the written employment reference shall be sent concurrently by the financial institution providing the reference, to the last known address of the person concerning whom the reference is provided.

(b) No bank, savings association, credit union, or any other financial institution shall be civilly liable for providing an employment reference as specified in subdivision (a), unless the information provided is false and the bank, savings association, credit union, or other financial institution providing the false information does so with knowledge and malice.

SEC. 3. Section 14757 of the Financial Code is repealed.

SEC. 4. Section 14768 is added to the Financial Code, to read:

14768. Any officer, director, employee, or agent of any credit

union who abstracts or willfully misapplies any of the money, funds, or property of the credit union, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the credit union. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

SEC. 5. Section 18457 is added to the Financial Code, to read:

18457. Any officer, director, employee, or agent of any company who abstracts or willfully misapplies any of the money, funds, or property of the industrial loan company, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the industrial loan company. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

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 948

An act to amend Section 925 of, and to add Section 1874.6 to, the Insurance Code, relating to insurance.

[Approved by Governor September 14, 1990 Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 925 of the Insurance Code is amended to read:

925. Upon request of the commissioner, and at intervals as prescribed by him or her, any insurer that appears to the commissioner to require immediate regulatory attention shall provide to the commissioner supplemental accounting, financial, and actuarial information. The commissioner may request that an insurer select and retain an independent certified public accountant, certified public accountant corporation, an actuary corporation, or an independent actuary satisfactory to the commissioner, if that

person has not already been retained by the insurer, whenever the information supplied or likely to be supplied is not satisfactory or acceptable to the commissioner, or, whenever the person who would be responsible for that preparation of that information has previously provided information that was not satisfactory or acceptable to the commissioner. The commissioner may select or retain an independent certified public accountant, a certified public accountant corporation, an actuary corporation, or an independent actuary, if the insurer does not within a reasonable time make the selection as requested by the commissioner. If the information is prepared by an independent certified public accountant or independent actuary, or other independent professional financial corporation or person, the corporation or person shall examine and render an opinion upon that supplemental information.

SEC. 2. Section 1874.6 is added to the Insurance Code, to read:

1874.6. Every insurer shall report covered private passenger automobiles involved in theft and salvage total losses, including the vehicle identification number and any other information as may be required, to the National Automobile Theft Bureau or a similar central organization engaged in automobile loss prevention approved by the commissioner, in accordance with regulations promulgated by the commissioner.

Prior to the payment of total theft losses, insurers shall comply with verification procedures in accordance with regulations adopted by the commissioner.

No insurer, the National Automobile Theft Bureau, or a similar central organization, engaged in automobile loss prevention approved by the commissioner, or their employees or agents, shall be liable for damages in a civil action when the insurer or person acts pursuant to this section in good faith, without malice, and in reasonable belief that the action taken is warranted by the known facts after a reasonable effort to obtain the facts.

As used in this section "private passenger automobile" a motor vehicle of the private passenger or station wagon type, any other four-wheel vehicle with a load capacity of 1,500 pounds or less, or a motorcycle.

CHAPTER 949

An act to add Article 5.5 (commencing with Section 1374.20) to Chapter 2.2 of Division 2 of the Health and Safety Code, and to add Chapter 1.5 (commencing with Section 10199) to Part 2 of Division 2 of the Insurance Code, relating to insurance.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990]

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

SECTION 1. Article 5.5 (commencing with Section 1374.20) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 5.5. Health Care Service Plan Coverage Contract Notification

1374.20. The purpose of the article is to promote the public interest, to prevent unfair and unlawful health care business practices, and to promote adequate consumer and employer advance notice of changes in the cost of health coverage in order to allow for comparative shopping and to reduce the cost of health coverage.

1374.21. No change in premium rates or changes in coverage stated in a group health care service plan contract shall become effective unless the plan has delivered in writing a notice indicating the change or changes at least 30 days prior to the contract renewal effective date.

1374.22. (a) The written notice shall be delivered by mail at the last known address at least 30 days prior to the renewal effective date to the group contract holder.

(b) The written notice shall state in italics either the actual dollar amount or a specific percentage of the premium rate increase. Further, the notice shall describe in plain understandable English and highlighted in italics any changes in the plan design or change in benefits with reduction in benefits, waivers, exclusions, or conditions.

(c) The written notice shall specify in 10-point bold typeface the reason or reasons for premium rate changes, plan design, or plan benefit changes.

1374.23. Notwithstanding subdivision (a) of Section 1374.22, if the plan does not guarantee either premium rates or plan design or benefits for any specified time period greater than 180 days, it shall deliver the written notice by mail to the group contract holder at least 30 days prior to the group contract renewal effective date.

1374.24. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any health care service plan

required to provide the notice or its authorized representatives, or agents, for any statement made, unless shown to have been made with malice in fact, by any of them in (a) any written notice or in any other oral or written communication specifying the reasons for the notice, (b) any communication providing information pertaining to that notice, or (c) evidence submitted at any court proceeding or informal inquiry in which that notice is at issue.

1374.25. Proof of mailing a notice and the reason therefor to the appropriate entity or individual at the most current policy or plan address shall be sufficient proof of the notice required by this chapter.

1374.26. The commissioner may, as required by this article, 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 article.

1374.27. The commissioner may levy administrative penalties and may suspend or revoke the license or licenses issued to any health care service plan, after notice and hearing, to have violated this article or a regulation adopted pursuant to the authority of this article. 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.

The remedies available to the commissioner pursuant to this article are not exclusive, and may be sought and employed in any combination with other remedies deemed advisable by the commissioner to enforce the provisions of this article.

1374.28. In addition to any other penalty provided by law or the availability of any administrative procedure, if a health care service plan, after notice and hearing, is found to have violated this article, or regulations adopted pursuant to this article, or knowingly permits any person to do so, the commissioner may suspend the authority of the plan to transact business.

SEC. 2. Chapter 1.5 (commencing with Section 10199) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 1.5. HEALTH COVERAGE CONTRACT NOTIFICATION

Article 1. Purpose and Title

10199. The purpose of the chapter is to promote the public interest, to prevent unfair and unlawful health care business practices, and to promote adequate consumer and employer advance notice of changes in the cost and benefits of health coverage in order to allow for comparative shopping and to reduce the cost of health coverage.

Article 2. General Provisions

10119.1. (a) No insurer or nonprofit hospital service plan or administrator acting on its behalf shall terminate a group master policy or contract providing hospital, medical, or surgical benefits, increase premiums or charges therefor, reduce or eliminate benefits thereunder, or restrict eligibility for coverage thereunder without providing prior notice of that action. No such action shall become effective unless written notice of the action was delivered by mail to the last known address of the appropriate insurance producer and the appropriate administrator, if any, at least 45 days prior to the effective date of the action and to the last known address of the group policyholder or group contract holder at least 30 days prior to the effective date of the action. If nonemployee certificate holders or employees of more than one employer are covered under the policy or contract, written notice shall also be delivered by mail to the last known address of each nonemployee certificate holder or affected employer or, if the action does not affect all employees and dependents of one or more employers, to the last known address of each affected employee certificate holder, at least 30 days prior to the effective date of the action.

(b) No holder of a master group policy or a master group nonprofit hospital service plan contract or administrator acting on its behalf shall terminate the coverage of, increase premiums or charges for, or reduce or eliminate benefits available to, or restrict eligibility for coverage of a covered person, employer unit, or class of certificate holders covered under the policy or contract for hospital, medical, or surgical benefits without first providing prior notice of the action. No such action shall become effective unless written notice was delivered by mail to the last known address of each affected nonemployee certificate holder or employer, or if the action does not affect all employees and dependents of one or more employers, to the last known address of each affected employee certificate holder, at least 30 days prior to the effective date of the action.

10199.2. (a) The written notice shall state in italics either the actual dollar amount or a specific percentage of the premium rate increase. Further, the notice shall describe in plain understandable English and highlighted in italics any changes in the plan design or change in benefits with reduction in benefits, waivers, exclusions, or conditions.

(b) The written notice shall specify the reason or reasons for premium rate changes, plan design, or plan benefit changes.

10199.3. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any entity required to provide the notice or its authorized representatives, or agents, for any statement made, unless shown to have been made with malice in fact, by any of them in (a) any written notice or in any other oral or written communication specifying the reasons for the notice, (b) any

communication providing information pertaining to such notice, or (c) evidence submitted at any court proceeding or informal inquiry in which such notice is at issue.

10199.4. Proof of mailing a notice and the reason therefor to the appropriate entity or individual at the last known mailing address shall be sufficient proof of the notice required by this chapter.

Article 3. Administration and Enforcement

10199.5. The commissioner may, 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.

10199.6. (a) The commissioner shall have the administrative authority to assess penalties against insurers, nonprofit hospital service plans, administrators, and insurance producers, and other entities engaged in the business of insurance or other persons or entities for violations of this chapter.

(b) Upon a showing of a violation of this chapter in any civil action, a court may also assess the penalties described in this chapter.

(c) The commissioner may suspend or revoke the license or licenses issued to any production agent or administrator 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.

10199.7. (a) Any production agent, administrator, or other person or entity engaged in the business of insurance, other than an insurer, who violates this chapter is liable for administrative penalties of not less than two hundred fifty dollars ($250) for the first violation.

(b) Any production agent, administrator, or other person or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time, or who commits a knowing violation of this chapter, is liable for administrative penalties of not less than one thousand dollars ($1,000) and not more than two thousand five hundred dollars ($2,500) for each violation.

(c) Any insurer who violates this chapter is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for the first violation.

(d) Any insurer who violates this chapter with a frequency that indicates a general business practice, or commits a knowing violation of this chapter, is liable for administrative penalties of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each violation.

10199.8. 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 740.7 shall apply in any proceeding conducted pursuant to this section.

10199.9. This chapter applies to all master group policies and master group nonprofit hospital service plan contracts providing hospital, medical, or surgical benefits, regardless of policy or contract situs, coverage under which is solicited in any manner in this state.

CHAPTER 950

An act to repeal Section 6204 of the Government Code, and to amend Section 118 of, and to add Section 118.1 to, the Penal Code, relating to crimes.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990]

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

SECTION 1. Section 6204 of the Government Code is repealed.

SEC. 2. Section 118 of the Penal Code is amended to read:

118. (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

SEC. 3. Section 118.1 is added to the Penal Code, to read:

118.1. Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in

the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years. This subdivision shall not apply to the contents of any statement which the peace officer attributes in the report to any other person.

CHAPTER 951

An act to amend Sections 9851, 9853, 9855, and 9867 of the Vehicle Code, relating to vessels, and making an appropriation therefor.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 9851 of the Vehicle Code is amended to read:

9851. The department may adopt rules and regulations for the registration of undocumented vessels belonging to the state, local public agencies, or to the United States without payment of fees specified in this code, except fees for duplicate certificates of ownership, duplicate certificates of number, or substitute current year registration stickers. Any vessel owned by the Department of Boating and Waterways is exempt from any fees specified in this division.

SEC. 2. Section 9853 of the Vehicle Code is amended to read:

9853. The owner of each vessel requiring numbering by this state shall file an initial application for a number with the department or with an agent authorized by the department on forms approved by the department. Such forms shall be prepared in cooperation with the Department of Boating and Waterways. The application shall contain the true name and address of the owner and of the legal owner, if any, and the hull identification number of the vessel as may be required by the department. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of nine dollars ($9), except that an owner of a vessel registered outside this state who is submitting an application for registration in this state shall pay a fee of thirty-seven dollars ($37).

SEC. 3. Section 9855 of the Vehicle Code is amended to read:

9855. If the ownership of an undocumented vessel changes, the existing certificate of ownership and a new application form accompanied by a fee of fifteen dollars ($15) shall be filed with the department and a new certificate of ownership and a new certificate of number shall be issued in the same manner as provided for in the initial issuance of number and the number shall be reassigned to the

new owner.

SEC. 4. Section 9867 of the Vehicle Code is amended to read:

9867. A fee of fifteen dollars ($15) shall be charged for a duplicate of certificate of number, certificate of ownership, or current year registration stickers.

SEC. 5. This act shall become operative on July 1, 1991.

CHAPTER 952

An act to add Section 1170.74 to the Penal Code, relating to controlled substances.

[Approved by Governor September 14, 1990. Filed with Secretary of State September 17, 1990.]

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

SECTION 1. Section 1170.74 is added to the Penal Code, to read:

1170.74. Upon conviction of a felony violation of Section 11377, 11378, 11379, or 11379.6 of the Health and Safety Code, for an offense involving methamphetamine, the fact that the controlled substance is the crystalline form of methamphetamine shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

CHAPTER 953

An act to add Section 120267 to the Public Utilities Code, relating to transit services.

[Approved by Governor September 16, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 120267 is added to the Public Utilities Code, to read:

120267. (a) The board may, by ordinance, regulate vehicle safety and driver qualifications for passenger jitney service operating between cities and between a city and unincorporated portions of San Diego County within the area of its jurisdiction.

(b) The board shall levy the fees necessary to recover the full cost of regulating these services.

(c) For purposes of this section, the term "passenger jitney service" includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of a passenger transportation service by motor vehicles

of not more than 15 passenger capacity, excluding the driver, which operate between fixed termini and over a regular route and generally on short, nonscheduled, headways.

CHAPTER 954

An act to amend Sections 9250.8, 9250.9, and 38225 of the Vehicle Code, relating to vehicle fees.

[Approved by Governor September 16, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 9250.8 of the Vehicle Code is amended to read:

9250.8. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle subject to registration under this code beginning January 1, 1986, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) This section shall remain in effect until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1993, deletes or extends that date.

SEC. 2. Section 9250.9 of the Vehicle Code is amended to read:

9250.9. (a) All fees received by the department pursuant to Section 9250.8 shall be deposited in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of maintaining the uniformed field strength of the Department of the California Highway Patrol.

(b) This section shall remain in effect until June 1, 1993, and as of that date is repealed, unless a later enacted statute which is chaptered on or before June 1, 1993, deletes or extends that date.

SEC. 3. Section 38225 of the Vehicle Code, as amended by Section 27 of Chapter 1027 of the Statutes of 1987, is amended to read:

38225. (a) A service fee of nine dollars ($9) shall be paid to the department for the issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division.

(b) This section shall become operative on January 1, 1993.

CHAPTER 955

An act to amend Section 1522 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 16, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

1522. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (e).

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting

requirements.

(6) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the licensing agency not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints may be on a card provided by the State Department of Social Services or by a local law enforcement office for the purpose of obtaining a permanent set of fingerprints. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the department shall verify receipt of the fingerprints.

Within 10 working days of the receipt of these fingerprints, the State Department of Social Services shall submit them to the Department of Justice. If new fingerprints are required for processing, the department shall notify the licensee within five working days of receipt of the fingerprints. If the department has not received the information required by this section within 45 calendar days, it shall request a status report on the fingerprint clearance from the Department of Justice.

Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the licensee of the criminal convictions, as provided in this subdivision. If no convictions are recorded, the department shall provide the licensee with a statement of the fact that there are no convictions within 10 working days of receipt of this information from the Department of Justice. If new fingerprints are required for processing, the State Department of Social Services shall notify the licensee within five working days from the date of notification by the Department of Justice that the fingerprints were illegible. Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d,

or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (e). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (e). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the state department 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, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(e) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a community care facility as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of

the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(f) Notwithstanding any other provision of law, an applicant for a license to operate a foster family home or a certified family home, as defined in Section 1506, may authorize the department to secure from an appropriate law enforcement agency, the full criminal record, instead of conviction information only, of the applicant to determine whether the applicant has ever been arrested for any crime or convicted of any crime other than a minor traffic violation. It is the intent of the Legislature that by obtaining a full criminal record, if any, at the time of application for a foster family home or certified family home to expedite the process under Section 226.55 of the Civil Code, if the prospective foster family subsequently files an application to adopt a child. The full criminal record obtained for licensing purposes may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(g) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

CHAPTER 956

An act to amend Section 11628 of the Insurance Code, relating to insurance.

[Approved by Governor September 16, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 11628 of the Insurance Code is amended to read:

11628. (a) No admitted insurer, licensed to issue and issuing motor vehicle liability policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, language, color, religion, national origin,

ancestry, or the same geographic area; nor shall race, language, color, religion, national origin, ancestry, or location within a geographic area of itself constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

As used in this section "geographic area" means a portion of this state of not less than 20 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber. In order that geographic areas used for rating purposes may reflect homogeneity of loss experience, a record of loss experience for the geographic area shall include the breakdown of actual loss experience statistics by zip code area (as designated by the United States Postal Service) within each geographic area for family owned private passenger motor vehicles and lightweight commercial motor vehicles, under 1½-ton load capacity, used for local service or retail delivery, normally within a 50-mile radius of garaging, and which are not part of a fleet of five or more motor vehicles under one ownership. A record of loss experience for the geographic area, including that statistical data by zip code area, shall be submitted annually to the commissioner for examination by each insurer licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both. Loss experience shall include separate loss data for each type of coverage, including liability or physical damage coverage, underwritten. An insurer may satisfy its obligation to report statistical data under this subdivision by providing its loss experience data to a rating or advisory organization for submission to the commissioner. This data shall be made available to the public by the commissioner annually after examination. However, the data shall be released in aggregate form by zip code in order that no individual insurer's loss experience for any specific geographic area be revealed. Differentiation in rates between geographical areas shall not constitute unfair discrimination.

All information reported to the department pursuant to this subdivision shall be confidential.

As used in this section, (1) "language" means the inability to speak, read, write, or comprehend the English language, (2) "dependents" shall include, but not be limited to, issue regardless of generation, and (3) "spouse" shall be determined without regard to current marital status.

(b) No admitted insurer, licensed to issue and issuing motor vehicle liability insurance policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, refuse to issue that insurance to an applicant therefor, or cancel that insurance solely for the reason that the applicant for that insurance or any insured is employed in a specific occupation, or is on active duty service in the Armed Forces of the United States.

Nothing in this section shall prohibit an insurer from:

(1) Considering the occupation of the applicant or insured as a

condition or risk for which a higher rate or discounted rate may be required or offered for coverage in the course and scope of his or her occupation.

(2) Charging a deviated rate to any classification of risks involving a specific occupation, or grouping thereof, if the rate meets the requirements of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1 and is based upon actuarial data which demonstrates a significant actual historical differential between past losses or expenses attributable to the specific occupation, or grouping thereof, and the past losses or expenses attributable to other classification of risks. For purposes of compiling that actuarial data for a specific occupation or grouping thereof, a person shall be deemed employed in the occupation in which that data is compiled if: (A) the majority of his or her employment during the previous year was in the occupation, or (B) the majority of his or her aggregate earnings for the immediate preceding three-year period were derived from the occupation, or (C) the person is a member in good standing of a union which is an authorized collective bargaining agent for persons engaged in the occupation.

Nothing in this section shall be construed to include in the definition of "occupation" any status or activity which does not result in remuneration for work done or services performed, or self-employment in a business operated out of an applicant's or insured's place of residence or persons engaged in the renting, leasing, selling, repossessing, rebuilding, wrecking, or salvaging of motor vehicles.

(c) Nothing in this section shall limit or restrict the ability of an insurer to refuse to accept an application for or refuse to issue or cancel such insurance for the reason that it is a commercial vehicle or based upon the consideration of a vehicle's size, weight, design, or intended use.

(d) It is the intent of the Legislature that actuarial data by occupation may be examined for credibility by the commissioner on the same basis as any other automobile insurance data which he or she is empowered to examine.

(e) (1) Except as provided in Article 4 (commencing with Section 11620), nothing in this section or in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1 or in any other provision of this code, shall prohibit an insurer from limiting the issuance or renewal of insurance as defined in subdivision (a) of Section 660 to persons who engage in, or have formerly engaged in, governmental or military service or segments of categories thereof, and their spouses, dependents, and former dependents or spouses.

(2) The term "military service" includes, but is not limited to, officer and warrant officer candidates, cadets or midshipmen at a service academy, cadets or midshipmen in advance Reserve Officer Training Corps programs or on Reserve Officer Training Corps program scholarships, National Guard officer candidates, students in government-sponsored precommissioning programs, and foreign

military officers while on temporary duty in the United States.

(f) This section shall be known and may be cited as the "Rosenthal-Robbins Auto Insurance Nondiscrimination Law."

CHAPTER 957

An act to amend Sections 56827.5, 56833.3, and 56842.6 of the Government Code, relating to property taxes.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 56827.5 of the Government Code is amended to read:

56827.5. Notwithstanding Section 56827, the commission shall not approve a proposal for incorporation until it has considered any other change of organization which conflicts with the incorporation proposal and which was submitted to the commission within 30 days of the submission of the incorporation proposal.

SEC. 2. Section 56833.3 of the Government Code is amended to read:

56833.3. (a) For any proposal which includes an incorporation, the executive officer shall, at the request of an interested party, which is submitted pursuant to paragraph (b), 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. The request by an interested party shall specify in writing the element or elements of the comprehensive fiscal analysis which the Controller is requested to review and the reasons the Controller is requested to review them.

(b) The commission may adopt written procedures for the acceptance, referral, and payment for a request for the Controller's review, which shall include setting a time period during which an interested party is permitted to submit a request pursuant to subdivision (a). The time period for accepting a request shall not be less than 30 days following notice given in the same manner as specified in Section 56153.

(c) 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 times within which the executive officer or commission is required to act pursuant to this chapter shall be tolled for the time required by the Controller for completion of the report. 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.

(d) 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 the person who requested the Controller's review.

SEC. 3. Section 56842.6 of the Government Code is amended 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 fiscal 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 fiscal 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 fiscal 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 fiscal 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 following the first full fiscal year of operation 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. 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 958

An act relating to land use, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. The Legislature finds and declares that the City of Fremont has not as yet adopted a complete, and adequate general plan as required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code; that the city has made substantial progress toward the completion of an adequate general plan by appropriating sufficient funds, hiring staff, and exhausting the remedies provided by Section 65361 of the Government Code to secure an extension of time to September 18, 1990, for the preparation and adoption of a complete and adequate general plan; that the general plan update process began with a systemic and comprehensive review of community opinion on land use issues by a specially created citizen advisory committee; that for many months, the planning commission has been engaged in its own comprehensive review of general plan update proposals; that, while steady progress in developing a complete and adequate general plan is being made, delays have been caused by allowing maximum time for public input, the sheer complexity of the project, and personnel loss and turnover in the planning department along with a need to restaff and restructure that department; and that adoption of a complete and adequate general plan while permitting adequate public review and comment cannot be accomplished by the current September 18, 1990, deadline.

SEC. 2. Notwithstanding the time limits imposed by Sections 65302 and 65361 of the Government Code, the Director of Planning and Research shall grant the City of Fremont an extension of time to January 1, 1991, for the preparation and adoption of a complete and adequate general plan, with the exception of the housing element as required by subdivision (c) of Section 65302. The director may, at the request of the City of Fremont, modify the conditions attached to the City of Fremont's second extension, which was granted on September 11, 1989. The purpose of this section is to permit the City of Fremont to continue to review and approve development proposals pending adoption of a complete and adequate general plan, pursuant to the conditions imposed on the city by the Office of Planning and Research as part of the extension granted on September 11, 1989, or pursuant to any modifications to these conditions as the Director of Planning and Research may have granted or may grant at the city's request.

SEC. 3. During the extension of time specified in this act, the City

of Fremont is not subject to the requirement that a complete and adequate general plan be adopted, the requirement that it be adopted within a specific period of time, or the requirements of state law that its decisions be consistent with the general plan. The City of Fremont shall comply with all other state laws.

SEC. 4. During the extension of time specified in this act, the City of Fremont shall comply with conditions imposed on the city by the Office of Planning and Research on September 11, 1989, or with any modifications to said conditions as the Director of the Office of Planning and Research may have granted or may grant, which compliance the Legislature finds is necessary to ensure full compliance with the purposes and intent of the Planning and Zoning Law (Title 7 (commencing with Section 65000) of the Government Code).

SEC. 5. Sections 1 to 4, inclusive, of this act shall become operative September 18, 1990.

SEC. 6. This act 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. 7. 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 due to the following unique circumstances:

Because of three specific conditions in the City of Fremont which do not exist in other cities, general plan preparation and the environmental and public reviews required for the draft planning documents under consideration by the City of Fremont are not finished, and more time is needed to permit public review and comment, and to complete them.

These specific conditions are:

(1) The threat of litigation in 1988 which could have had the effect of stopping all construction until the city revised its general plan.

(2) The untimely departure of key city employees who were responsible for revising the general plan, including the planning director.

(3) The city council's commitment to seek and respond to public comments, especially the views of the official Citizens' Advisory Committee which the council had appointed.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, and safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Despite ongoing and continued efforts to meet the current deadline for adoption of a general plan by September 18, 1990, the City of Fremont cannot do so and at the same time accede to demands from any segments of the public for adequate time to review and comment on the plan. Because members of the public should be given full opportunity to review and comment on a general plan which will have such a significant and long-lasting effect

on the environment in which they live, it is necessary that this act take effect immediately.

CHAPTER 959

An act to add Chapter 5.5 (commencing with Section 56520) to Part 30 of the Education Code, relating to education.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Chapter 5.5 (commencing with Section 56520) is added to Part 30 of the Education Code, to read:

CHAPTER 5.5. BEHAVIORAL INTERVENTIONS

56520. (a) The Legislature finds and declares all of the following:

(1) That the State of California has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally handicapping conditions.

(2) That teachers of children with special needs require training and guidance that provides positive ways for working successfully with children who have difficulties conforming to acceptable behavioral patterns in order to provide an environment in which learning can occur.

(3) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 of the Education Code or those that cause pain or trauma.

(b) It is the intent of the Legislature:

(1) That when behavioral interventions are used, they be used in consideration of the pupil's physical freedom and social interaction, and be administered in a manner that respects human dignity and personal privacy and that ensures a pupil's right to placement in the least restrictive educational environment.

(2) That behavioral management plans be developed and used, to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.

(3) That a statewide study be conducted of the use of behavioral interventions with California individuals with exceptional needs receiving special education and related services.

(4) That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to assure that adequately

trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.

56521. (a) This chapter applies to any individual with exceptional needs who is in a public school program, including a state school for the handicapped pursuant to Part 32 (commencing with Section 59000), or who is placed in a nonpublic school program pursuant to Sections 56365 to 56366.5, inclusive.

(b) The Superintendent of Public Instruction shall monitor and supervise the implementation of this chapter.

56522. (a) On or before June 30, 1992, the Superintendent of Public Instruction shall conduct a statewide study of the use of behavioral interventions with individuals with exceptional needs receiving special education and related services. The study shall include, but not necessarily be limited to, identification of the frequency in the use of behavioral interventions; the number of districts with policies in place for working with children exhibiting continuous serious behavioral problems; how policies, rules, or regulations within districts differ between emergency and routine behavioral interventions commonly practiced and those restricted by Section 49001; the nature and extent of costs for training provided to personnel for implementing a program of nonaversive behavioral interventions; and the nature and extent of costs for training provided to parents of individuals with exceptional needs who would be receiving behavioral interventions. The scope of the study shall be developed by the State Department of Education, in consultation with the Advisory Commission on Special Education and other groups representing parents, teachers, administrators, and advocates.

(b) The department shall use available discretionary federal funds for the purposes of conducting the statewide study pursuant to subdivision (a).

56523. (a) On or before September 1, 1992, the Superintendent of Public Instruction shall develop and the State Board of Education shall adopt regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services.

(b) The regulations shall do all of the following:

(1) Specify the types of positive behavioral interventions which may be utilized and specify that interventions which cause pain or trauma are prohibited.

(2) Require that, if appropriate, the pupil's individual education plan includes a description of the positive behavioral interventions to be utilized which accomplishes the following:

(A) Assesses the appropriateness of positive interventions.

(B) Assures the pupil's physical freedom, social interaction, and individual choices.

(C) Respects the pupil's human dignity and personal privacy.

(D) Assures the pupil's placement in the least restrictive environment.

(E) Includes the method of measuring the effectiveness of the interventions.

(F) Includes a timeline for the regular and frequent review of the pupil's progress.

(3) Specify standards governing the application of restrictive behavioral interventions in the case of emergencies. These emergencies must pose a clear and present danger of serious physical harm to the pupil or others. These standards shall include:

(A) The definition of an emergency.

(B) The types of behavioral interventions that may be utilized in an emergency.

(C) The duration of the intervention which shall not be longer than is necessary to contain the dangerous behavior.

(D) A process and timeline for the convening of an individual education plan meeting to evaluate the application of the emergency intervention and adjust the pupil's individual education plan in a manner designed to reduce or eliminate the negative behavior through positive programming.

(E) A process for reporting annually to the State Department of Education and the Advisory Commission on Special Education the number of emergency interventions applied under this chapter.

56524. The superintendent shall explore with representatives of institutions of higher education and the Commission on Teacher Credentialing, the current training requirements for teachers to ensure that sufficient training is available in appropriate behavioral interventions for people entering the field of education.

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 960

An act to amend Section 529.5 of the Penal Code, relating to crimes.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 529.5 of the Penal Code is amended to read:

529.5. (a) Every person who manufactures, sells, offers for sale, or transfers any document, not amounting to counterfeit, purporting to be a government-issued identification card or driver's license, which by virtue of the wording or appearance thereon could reasonably deceive an ordinary person into believing that it is issued by a government agency, and who knows that the document is not a government-issued document, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who, having been convicted of a violation of subdivision (a), is subsequently convicted of a violation of subdivision (a), is punishable for the subsequent conviction by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(c) Any person who possesses a document described in subdivision (a) and who knows that the document is not a government-issued document is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) and not more than two thousand five hundred dollars ($2,500). The misdemeanor fine shall be imposed except in unusual cases where the interests of justice would be served. The court may allow an offender to work off the fine by doing community service. If community service work is not available, the misdemeanor shall be punishable by a fine of up to one thousand dollars ($1,000), based on the person's ability to pay.

(d) If an offense specified in this section is committed by a person when he or she is under 21 years of age, but is 13 years of age or older, the court also may suspend the person's driving privilege for one year, pursuant to Section 13202.5 of the Vehicle Code.

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 961

An act to amend Section 17788.7 of the Education Code, relating to portable classrooms, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 17788.7 of the Education Code is amended to read:

17788.7. (a) Any school district, or, under a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, any combination of one or more school districts or county superintendents of schools, may, to the extent of the eligibility of the school district or of the parties to the joint powers agreement to lease portable classrooms under this chapter, purchase portable classrooms as provided in this section.

(b) The number of portable classrooms which may be purchased pursuant to this section, on a statewide basis, shall not exceed 200 in any given year, and shall not exceed 600 in total. Portable classrooms purchased prior to September 22, 1989, are exempt from the yearly limit of 200, but shall be counted towards the total limit of 600.

(c) The purchase costs of the portable classrooms, which include costs of site preparation, furniture and equipment, toilet facilities as described in Section 65980 of the Government Code, and the transportation of classrooms, may be funded from revenues received by the school district or districts pursuant to Section 53080 of the Government Code. The purchase shall comply with any procedures and policies established by the board under this chapter for the purchase of portable classrooms. All portable classrooms purchased pursuant to this section are the property of the state.

(d) The board shall lease the portable classrooms purchased pursuant to the authority granted in this section to the purchaser, as described in subdivision (a), in accordance with this chapter, including applicable eligibility standards, and the purchase costs paid shall be credited toward the rent the purchaser would otherwise be required to pay under this chapter as a lessee.

(e) In the event that the purchase of portable classrooms under this section occurs pursuant to a joint powers agreement, as described in subdivision (a), the agreement shall identify the school district or districts and county superintendent or superintendents of

schools that are party to the agreement, identify the district or districts providing the revenues, specify the manner in which the revenues are to be expended, and specify the distribution of portable classrooms subsequent to purchase, which distribution shall be in accordance with the eligibility requirements of this chapter. The agreement shall be subject to approval of the board, pursuant to subdivision (b) and any applicable procedures and policies established by the board under this chapter.

(f) Where a school district has committed any fee or other requirement levied under Section 53080 of the Government Code for the purchase costs of portable classrooms pursuant to this section, including any obligation under a joint powers agreement entered into for the purposes of this section, which is to be collected during any portion of the period designated for the calculation of the local matching share described in Section 17705.5, the board shall permit the school district to delay its payment of the affected portion of the matching share until the district has fulfilled its funding commitment under this section pursuant to terms and conditions approved by the board provided that the payment shall not be delayed for a period in excess of five years.

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

In order to create an alternative method for schools to obtain emergency classrooms to accommodate increased student enrollment, it is necessary that this act take effect immediately.

CHAPTER 962

An act to amend Section 1277 of the Health and Safety Code, and to amend Section 5600.2 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 1277 of the Health and Safety Code is amended to read:

1277. (a) No license shall be issued by the state department unless it finds that the premises, the management, the bylaws, rules and regulations, the equipment, the staffing, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the health facility is operated in the manner required by this chapter and by the rules and regulations adopted hereunder.

(b) Notwithstanding any provision of Part 2 (commencing with Section 5600) of Division 5 of, or Division 7 (commencing with Section 7100) of, the Welfare and Institutions Code or any other law to the contrary, except Sections 2137.1 and 2137.2 of the Business and Professions Code, the licensure requirements for professional personnel, including, but not limited to, physicians and surgeons, dentists, podiatrists, psychologists, marriage, family, and child counselors, pharmacists, registered nurses, and clinical social workers in the state and other governmental health facilities licensed by the state department shall not be less than for those professional personnel in health facilities under private ownership. Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same state or other governmental health facility licensed by the state department, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of this subdivision. Additionally, the requirements of this subdivision may be waived by the state department solely for persons in the professions of psychology, marriage, family, and child counseling or clinical social work who are gaining qualifying experience for licensure in such profession in this state. A waiver granted pursuant to this subdivision shall not exceed two years from the date the employment commences in this state in the case of psychologists, three years from commencement of the employment in this state in the case of marriage, family, and child counselors, or four years from the commencement of employment in this state in the case of clinical social workers, at which time licensure shall have been obtained or the employment shall be terminated except that an extension of a waiver of licensure may be granted to clinical social workers for one additional year, based on extenuating circumstances determined by the department pursuant to subdivision (e). However, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in social work, social welfare, or social science, who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of this training. Additionally, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in marriage, family, and child counseling or marital and family therapy who are enrolled at a school, college, or university, specified in subdivision (a) of Section 4980.40 of the Business and Professions Code, but the limitations shall apply following completion of the training. A waiver pursuant to this subdivision shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensing examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated, provided that the employee shall take the licensure

examination at the earliest possible date after the date of his or her employment, and if the employee does not pass the examination at that time, he or she shall have a second opportunity to pass the examination, subject to the one-year limit.

(c) A special permit shall be issued by the state department when it finds that the staff, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the special services unit is operated in the manner required in this chapter and by the rules and regulations adopted hereunder.

(d) The state department shall apply the same standards to state and other governmental health facilities that it licenses as it applies to health facilities in private ownership, including standards specifying the level of training and supervision of all unlicensed practitioners.

(e) The department shall grant a request for an extension of a waiver based on extenuating circumstances, pursuant to subdivision (b), if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event which may impair the person's ability to qualify for and pass the license examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster, serious and prolonged illness of the person, serious and prolonged illness or death of a child, spouse, or parent, or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist which substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship which the department, in its discretion, determines to warrant the extension.

SEC. 2. Section 5600.2 of the Welfare and Institutions Code is amended to read:

5600.2. (a) Except as provided in this section, persons employed or under contract to provide mental health services pursuant to this part shall be subject to all applicable requirements of law respecting professional licensure, and no person shall be employed in local mental health programs pursuant to this part to provide services for which such a license is required, unless the person possesses a currently valid license.

(b) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same program or facility, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a). Additionally, the requirements of subdivision (a) may be waived by the department solely for persons in the professions of psychology, clinical social work, or marriage, family and child counseling who are gaining qualifying experience for licensure in the profession in this state.

(c) (1) A waiver granted pursuant to subdivision (b) shall not exceed three years from commencement of employment in this state in the case of marriage, family, and child counselors, at which time licensure shall have been obtained or the employment shall be terminated. For persons employed as marriage, family, and child counselors less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed five years.

(2) A waiver granted pursuant to subdivision (b) shall not exceed four years from commencement of employment in this state in the case of full-time clinical social workers, at which time licensure shall have been obtained or the employment shall be terminated. However, the department may grant an extension of a waiver of licensure for one additional year, based on extenuating circumstances as determined by the department pursuant to subdivision (f). For persons employed as clinical social workers less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years.

(d) A waiver granted pursuant to subdivision (b) shall not exceed two years from commencement of employment in this state in the case of psychologists, at which time licensure shall have been obtained or the employment shall be terminated. For persons employed full time as a psychologist, the department may grant an extension of a waiver of licensure for an additional year, based upon extenuating circumstances as determined by the department. For persons employed less than full time as a psychologist, the department may grant an extension of a waiver of licensure for additional years proportional to the extent of part-time employment, based upon extenuating circumstances as determined by the department as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed five years.

(e) However, the durational limitations upon waivers shall not apply to active candidates for a doctoral degree in social work, social welfare, or social science, who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of this training. Additionally, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in marriage, family and child counseling or marital and family therapy who are enrolled at a school, college, or university, specified in subdivision (a) of Section 4980.40 of the Business and Professions Code, but the limitations shall apply following completion of the training. A waiver pursuant to this section shall be granted only to the extent necessary to qualify for

licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensing examination shall, nevertheless, have two years from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated. The department may grant an extension of a waiver of licensure for personnel recruited from outside this state for one additional year, based upon extenuating circumstances as determined by the department pursuant to subdivision (f).

(f) The department shall grant a request for an extension of a waiver based on extenuating circumstances, pursuant to subdivision (c) or (e), if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event which may impair the person's ability to qualify for and pass the license examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster, serious and prolonged illness of the person, serious and prolonged illness or death of a child, spouse, or parent, or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist which substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship which the department, in its discretion, determines to warrant the extension.

SEC. 3. This act shall apply to all persons who received a waiver of licensure from the State Department of Mental Health on or after January 1, 1988. This act shall also apply to all persons registered as associate clinical social workers on and after January 1, 1990, and to persons who are qualified for the state licensing examination for clinical social workers on and after January 1, 1990.

CHAPTER 963

An act to add Article 8 (commencing with Section 10509) to Chapter 5 of Part 2 of Division 2 of the Insurance Code, relating to insurance.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Article 8 (commencing with Section 10509) is added to Chapter 5 of Part 2 of Division 2 of the Insurance Code, to read:

Article 8. Requirements for Replacement of Life Insurance and Annuity Policies

10509. The purpose of this article is the following:

(a) To regulate the activities of insurers, agents, and brokers with respect to the replacement of existing life insurance and annuities.

(b) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by the following:

(1) Assuring that the purchaser receives information with which a decision can be made in his or her own best interest.

(2) Reducing the opportunity for misrepresentation and incomplete disclosures.

(3) Establishing penalties for failure to comply with the requirements of this article.

10509.1. This article is applicable to all individual life insurance and annuity policies.

10509.2. "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker, or to the proposing insurer if there is no agent, that by reason of that transaction, the existing life insurance or annuity has been or is to be any of the following:

(a) Lapsed, forfeited, surrendered, or otherwise terminated.

(b) Converted to reduced paid—up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values.

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.

(d) Reissued with any reduction in cash value.

(e) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy.

(f) "Conservation" means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers, or reinstatement offers.

(g) "Direct-response sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

(h) "Existing insurer" means the insurer whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

(i) "Existing life insurance or annuity" means any life insurance or annuity in force including life insurance under a binding or conditional receipt or a life insurance policy that is within an

unconditional refund period.

(j) "Replacing insurer" means the insurer that issues a new policy which is a replacement of existing life insurance or annuity.

(k) "Registered contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurers which are registered with the Federal Securities and Exchange Commission.

10509.3. Unless otherwise specifically included, this article does not apply to the following:

(a) Credit life insurance.

(b) Group life insurance or group annuities.

(c) An application to the existing insurer that issued the existing life insurance when a contractual change or a conversion privilege is being exercised.

(d) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer.

(e) Transactions where the replacing insurer and the existing insurer are the same; provided, however, agents or brokers proposing replacement shall comply with the requirements of subdivision (a) of Section 10509.4.

(1) Comply with the requirements of subdivisions (a) and (d) of Section 10509.4.

(2) Provide and leave with the applicant a written statement containing information relating to premiums, cash values, death benefits, and outstanding indebtedness, and dividends and dividend accumulations, if any, for the existing policy, both immediately before and after replacement, and for the proposed life insurance or annuity.

(f) Registered contracts shall be exempt from the requirements of paragraphs (2) and (3) of subdivision (b) of Section 10509.6 requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

10509.4. (a) Each agent or broker who accepts an application shall submit to the insurer with which an application for life insurance or annuity is presented with or as part of each application, both of the following:

(1) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction.

(2) A signed statement as to whether or not the agent knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved, the agent shall do all of the following:

(1) Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement of Life

Insurance" in the form as described in subdivision (d). The notice shall be signed by both the applicant and the agent or broker and left with the applicant. Obtain with or as part of each application a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(2) Leave with the applicant the original or a copy of all printed communications used for presentation to the applicant.

(3) Submit to the replacing insurer with the application a copy of the replacement notice.

(c) Every agent or broker who uses written or printed communications in conservation shall leave with the applicant the original of such materials used.

(d) Each agent or broker shall present to an applicant the following notice:

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required by law to notify your existing company that you may be replacing their policy.

10509.5. Every life insurer shall do the following:

(a) Inform its field representatives or other personnel responsible for compliance with this article of the requirements of this article.

(b) Require with, or as part of, each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

10509.6. Every life insurer that uses an agent or broker in a life insurance or annuity sale shall do the following:

(a) Require with, or as part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the

transaction.

(b) Where a replacement is involved:

(1) Require from the agent or broker with the application for life insurance or annuity: (i) a list of all of the applicant's existing life insurance or annuity to be replaced, and (ii) a copy of the replacement notice provided the applicant pursuant to Section 10509.4. The existing life insurance or annuity shall be identified by name of insurer, insured, and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number shall be listed.

(2) Send to each existing life insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to this section and a policy summary, contract summary, or ledger statement containing policy data on the proposed life insurance or annuity. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within three working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(3) Every existing life insurer or the insurer's agent or broker that undertakes a conservation shall, within 20 days from the date the written communication plus the materials required in subdivisions (1) and (2) are received by the existing insurer, furnish the policyowner with a policy summary for the existing life insurance or ledger statement containing policy data on the existing policy or annuity. Information relating to premiums, cash values, death benefits, and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that in the contract summary.

The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be within five working days of the receipt of the request.

(c) The replacing insurer shall maintain evidence of the "notice regarding replacement," the policy summary, the contract summary and any ledger statements used, and a replacement register, cross-indexed by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries, or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years.

(d) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the

applicant has a right to an unconditional refund of all premiums paid which right may be exercised within a period of 20 days commencing from the date of delivery of the policy.

10509.7. (a) If in the solicitation of a direct response sale, an insurer does not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a replacement notice as described in subdivision (c) of Section 10509.4 or other substantially similar form approved by the commissioner. In those instances the insurer may delete the last sentence and the reference to signatures from the form without having to obtain approval of the form from the commissioner.

(b) If the insurer proposed the replacement it shall do the following:

(1) Provide to applicants or prospective applicants with or as part of the application a replacement notice as described in subdivision (d) of Section 10509.4.

(2) Request from the applicant with or as part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer and insured.

(3) Comply with the requirements of paragraph (2) of subdivision (b) of Section 10509.6, if the applicant furnishes the names of the existing insurers, and the requirements of subdivision (c) of Section 10509.6, except that it need not maintain a replacement register.

10509.8. (a) A violation of this article shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a materially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any.

(b) Patterns of action by policyowners who purchase replacement policies from the same agent or broker, after indicating on applications that replacement is not involved, shall constitute a rebuttable presumption of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall constitute a rebuttable presumption of the agent's or broker's intent to violate this article.

(c) This article does not prohibit the use of additional material other than that which is required that is not in violation of this article or any other statute or regulation.

10509.9. (a) Any broker, agent, or other person or entity engaged in the business of insurance, other than an insurer, who violates this article is liable for administrative penalties of no less than two hundred fifty dollars ($250) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for administrative penalties of no less than one thousand dollars ($1,000) and no more than twenty-five thousand dollars ($25,000) for each violation.

(c) Any insurer who violates this article is liable for administrative penalties of no less than two thousand five hundred dollars ($2,500) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for administrative penalties of no less than ten thousand dollars ($10,000) and no more than one hundred thousand dollars ($100,000) for each violation.

(e) Nothing in this section shall be deemed to affect any other authority provided by law to the commissioner.

CHAPTER 964

An act to add Title 1A (commencing with Section 1738.10) to Part 4 of Division 3 of the Civil Code, relating to independent wholesale sales representatives.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Title 1A (commencing with Section 1738.10) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1A. INDEPENDENT WHOLESALE SALES REPRESENTATIVES

1738.10. The Legislature finds and declares that independent wholesale sales representatives are a key ingredient to the California economy. The Legislature further finds and declares the wholesale sales representatives spend many hours developing their territory in order to properly market their products, and therefore should be provided unique protection from unjust termination of the territorial market areas. Therefore, it is the intent of the Legislature, in enacting this act to provide security and clarify the contractual relations between manufacturers and their nonemployee sales representatives.

1738.11. This chapter shall be known and cited as the Independent Wholesale Sales Representatives Contractual Relations Act of 1990.

1738.12. For purposes of this chapter the following terms have the following meaning:

(a) "Manufacturer" means any organization engaged in the business of producing, assembling, mining, weaving, importing or by any other method of fabrication, a product tangible or intangible, intended for resale to, or use by the consumers of this state.

(b) "Jobber" means any business organization engaged in the

business of purchasing products intended for resale and invoicing to purchasers for resale to, or use by, the consumers of this state.

(c) "Distributor" means any business organization engaged in offering for sale products which are shipped from its inventory, or from goods in transit to its inventory, to purchasers and intended for resale to, or use by the consumers of this state.

(d) "Chargeback" means any deduction taken against the commissions earned by the sales representative which are not required by state or federal law.

(e) "Wholesale sales representative" means any person who contracts with a manufacturer, jobber, or distributor for the purpose of soliciting wholesale orders, is compensated, in whole or part, by commission, but shall not include one who places orders or purchases exclusively for his own account for resale and shall not include one who sells or takes orders for the direct sale of products to the ultimate consumer.

1738.13. (a) Whenever a manufacturer, jobber, or distributor is engaged in business within this state and uses the services of a wholesale sales representative, who is not an employee of the manufacturer, jobber, or distributor, to solicit wholesale orders at least partially within this state, and the contemplated method of payment involves commissions, the manufacturer, jobber, or distributor shall enter into a written contract with the sales representative.

(b) The written contract shall include all of the following:

(1) The rate and method by which the commission is computed.

(2) The time when commissions will be paid.

(3) The territory assigned to the sales representative.

(4) All exceptions to the assigned territory and customers therein.

(5) What chargebacks will be made against the commissions, if any.

(c) The sales representative and the manufacturer, jobber, or distributor shall each be provided with a signed copy of the written contract and the sales representative shall sign a receipt acknowledging receipt of the signed contract.

(d) The sales representative shall be provided with the following written information and documentation with payment of the commission:

(1) An accounting of the orders for which payment is made, including the customer's name and invoice number.

(2) The rate of commission on each order.

(3) Information relating to any chargebacks included in the accounting.

(e) No contract shall contain any provision which waives any rights established pursuant to this chapter. Any such waiver is deemed contrary to public policy and void.

1738.14. A manufacturer, jobber, or distributor who is not a resident of this state, and who enters into a contract regulated by this chapter is deemed to be doing business in this state for purposes of

personal jurisdiction.

1738.15. A manufacturer, jobber, or distributor who willfully fails to enter into a written contract as required by this chapter or willfully fails to pay commissions as provided in the written contract shall be liable to the sales representative in a civil action for treble the damages proved at trial.

1738.16. In a civil action brought by the sales representative pursuant to this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other recovery.

1738.17. This chapter shall not apply to any person licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code.

CHAPTER 965

An act to amend Sections 38773 and 38773.5 of, and to add Section 38773.1 to, the Government Code, relating to nuisance abatement.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 38773 of the Government Code is amended to read:

38773. The legislative body may provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining it and by ordinance may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with Section 38773.1 or 38773.5.

SEC. 2. Section 38773.1 is added to the Government Code, to read:

38773.1. (a) The legislative body may by ordinance establish a procedure to collect abatement and related administrative costs by a nuisance abatement lien. This ordinance shall require notice prior to the recordation of the lien to the owner of record of the parcel of land or which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

(b) The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section

6062.

(c) A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(1) A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment.

(4) Notwithstanding Section 6103, Section 27383, or any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner. A city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

SEC. 3. Section 38773.5 of the Government Code is amended to read:

38773.5. As an alternative to the procedure authorized by Section 38773.1, the legislative body may by ordinance establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection. Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation.

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

local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 966

An act to add Chapter 5.5 (commencing with Section 5450) to Division 6 of Title 1 of the Government Code, relating to public bonds.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Chapter 5.5 (commencing with Section 5450) is added to Division 6 of Title 1 of the Government Code, to read:

CHAPTER 5.5. COLLATERAL SECURITY FOR BONDS

5450. (a) "Bonds" means any bonds, notes, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements, or certificates of participation therein, that are not issued pursuant to statutory authority containing a provision governing the perfection and priority of pledges of collateral unless the provision provides that this chapter shall govern.

(b) "Collateral" means any revenues, moneys, accounts receivable, contractual rights to payment, and other rights to payment of whatever kind, subject to the pledge provided for or created in a pledge document.

(c) "Pledge document" means the resolution, ordinance, indenture, trust agreement, loan agreement, lease, installment sale agreement, reimbursement or similar agreement with any provider of credit enhancement for bonds, pledge agreement, or similar agreement in which the pledge is provided for or created.

(d) "Pledge" means, and as used in any pledge document shall be deemed to create, a grant of a lien on and a security interest in and pledge of the collateral referred to in a pledge document.

(e) "Public body" means the state or any city, county, city and county, district, other political subdivision of the state, public authority, or other public corporation which is authorized to issue bonds. "Public body" shall not include any private person, partnership, corporation, or other private entity, including any nonprofit private entity.

(f) "Security interest" means a prior claim on any revenues, moneys, accounts receivable, contractual rights to payment, or other rights to payment, which are pledged in a pledge document, unless otherwise provided in the pledge document.

5451. (a) A pledge of collateral by any public body to secure, directly or indirectly, the payment of the principal or redemption price of, or interest on, any bonds, or any reimbursement or similar agreement with any provider of credit enhancement for bonds, which is issued by or entered into by a public body, 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.

(b) The collateral shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately 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.

5452. Nothing in this chapter shall be construed to authorize new or increased authority to issue bonds.

CHAPTER 967

An act to amend Sections 25411, 25416, and 25421 of, and to add Sections 25410.5 and 25410.6 to, the Public Resources Code, relating to energy conservation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 25410.5 is added to the Public Resources Code, to read:

25410.5. The Legislature finds and declares all of the following:

(a) Energy costs are frequently the second largest discretionary expense in a local government's budget. According to the commission, most public institutions could reduce their energy costs by 20 to 30 percent.

(b) A variety of energy conservation measures are available to local governments. These measures are highly cost-effective, often providing a payback on the initial investment in three years or less.

(c) Many local governments lack energy management expertise and are often unaware of their high energy costs or the opportunities

to reduce those costs.

(d) Local governments that desire to reduce their energy costs through energy conservation and efficiency measures often lack available funding.

(e) Since 1980, the Energy Conservation Assistance Account has provided $43.7 million in loans, through a revolving loan account, to 323 schools, hospitals, and local governments. The energy conservation projects funded by the account save approximately $20 million annually in energy costs.

(f) Local governments and public institutions need assistance in all aspects of energy efficiency improvements, including project identification, project development and implementation, operations and maintenance, and troubleshooting.

SEC. 2. Section 25410.6 is added to the Public Resources Code, to read:

25410.6. (a) It is the intent of the Legislature that the commission shall administer the State Energy Conservation Assistance Account to provide grants and loans to local governments and public institutions to maximize energy use savings, including, but not limited to, technical assistance, demonstrations, and identification and implementation of cost-effective energy efficiency measures and programs.

(b) It is further the intent of the Legislature that the commission seek the assistance of utility companies in providing energy audits for local governments and public institutions and in publicizing the availability of State Energy Conservation Assistance Account funds to qualified entities.

SEC. 3. Section 25411 of the Public Resources Code is amended to read:

25411. As used in this chapter:

(a) "Allocation" means a loan of funds by the commission pursuant to the procedures specified in this chapter.

(b) "Building" means any occupied structure which includes a heating or cooling system, or both. Additions to an original building shall be considered part of that building rather than a separate building.

(c) "Eligible institution" means a school, hospital, public care institution, or a unit of local government.

(d) "Energy audit" means a determination of the energy consumption characteristics of a building or facility which does all of the following:

(1) Identifies the type, size, and energy use level of such building or facility and the major energy using systems of such building or facility.

(2) Determines appropriate energy conservation maintenance and operating procedures.

(3) Indicates the need, if any, for the acquisition and installation of energy conservation measures.

(e) "Energy conservation maintenance and operating

procedure" means a modification or modifications in the maintenance and operations of a building or facility, and any installations therein (based on the use time schedule of the building or facility), which are designed to reduce energy consumption in such building or facility and which require no significant expenditure of funds.

(f) "Energy conservation measure" means an installation or modification of an installation in a building or facility which is primarily intended to reduce energy consumption or allow the use of a more desirable energy source.

(g) "Energy conservation project" means an undertaking to acquire and to install one or more energy conservation measures in a building or facility, and technical assistance in connection with any such undertaking.

(h) "Facility" means any major energy using system of an eligible institution whether or not housed in a building.

(i) "Hospital" means a public or nonprofit institution which is:

(1) A general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

(2) Duly authorized to provide hospital services under the laws of this state.

(j) "Hospital building" means a building housing a hospital and related operations, including laboratories, laundries, outpatient departments, nurses' home and training activities, and central service operations in connection with a hospital, and also includes a building housing education or training activities for health professions personnel operated as an integral part of a hospital.

(k) "Local government building" means a building which is owned and primarily occupied by offices or agencies of a unit of local government or by a public care institution and shall not include any building intended for seasonal use or any building used primarily by a school or hospital.

(*l*) "Project" means a purpose for which an allocation may be requested and made under this chapter. Such purposes shall include energy audits, energy conservation and operating procedures, energy conservation measures, energy conservation projects, and technical assistance programs.

(m) "Public care institution" means a public or nonprofit institution which owns:

(1) A long-term care institution.

(2) A rehabilitation institution.

(3) An institution for the provision of public health services, including related publicly owned services such as laboratories, clinics, and administrative offices operated in connection with such an institution.

(4) A residential child care center.

(n) "Public or nonprofit institution" means an institution owned and operated by:

(1) The state, a political subdivision of the state, or an agency or instrumentality of either.

(2) An organization exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

(3) In the case of public care institutions, an organization also exempt from income tax under Section 501(c)(4) of the Internal Revenue Code of 1954.

(o) "School" means a public or nonprofit institution, including a local educational agency, which:

(1) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis.

(2) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis and:

(A) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate.

(B) Is accredited by a nationally recognized accrediting agency or association.

(C) Provides an education program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of paragraphs (A) and (B) and which provides such a program.

(3) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of (2).

(p) "School building" means a building housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

(q) "Technical assistance costs" means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel (or both such types of personnel) necessary for providing technical assistance.

(r) "Technical assistance program" means assistance to schools, hospitals, local government, and public care institutions for:

(1) Conducting specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of:

(A) Modification of maintenance and operating procedures in a building or facility, in addition to those modifications implemented after the preliminary energy audit, or

(B) Acquisition and installation of one or more specified energy conservation measures in such building or facility, or as a result of both.

(2) Planning of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building or facility.

(s) "Unit of local government" means a unit of general purpose government below the state or a special district.

SEC. 4. Section 25416 of the Public Resources Code is amended to read:

25416. (a) The Controller shall establish, maintain, and administer a separate account within the General Fund to carry out this chapter. Notwithstanding Section 13340 of the Government Code, the account is continuously appropriated for encumbrance for use by the commission without regard to fiscal year. The account shall be named the State Energy Conservation Assistance Account.

(b) The Controller shall deposit in the State Energy Conservation Assistance Account all moneys authorized and appropriated to it by the Legislature and all moneys received by the commission pursuant to Sections 25414 and 25415.

(c) The Controller shall disburse such moneys from the account as the commission may authorize pursuant to this chapter.

(d) The commission may contract for services to be performed for eligible institutions. Services may include, but are not limited to, feasibility analysis, project design, field assistance, and operation and training. The amount expended for contract services shall not exceed 10 percent of the annual appropriation to the State Energy Conservation Assistance Account.

(e) The commission is hereby authorized to make grants to demonstrate energy efficiency technologies at appropriate locations throughout the state. The amount expended for grants shall not exceed 5 percent of the annual appropriation to the State Energy Conservation Assistance Account.

SEC. 5. Section 25421 of the Public Resources Code is amended to read:

25421. This chapter shall remain in effect until January 1, 2001, and as of such date is repealed; provided, that all loans outstanding on such date shall continue to be repaid on a semiannual basis, as specified in Section 25415, until paid in full irrespective of such repeal. All unexpended funds in the State Energy Conservation Assistance Account on January 1, 2001, and thereafter shall revert to the General Fund.

SEC. 6. (a) The sum of one million seven hundred thousand dollars ($1,700,000) is hereby transferred from the State Energy Conservation Assistance Account in the General Fund to the Energy Technologies Research, Development and Demonstration Account in the General Fund. Item 3360-001-479 of the Budget Act of 1990 is hereby augmented by the sum of one million seven hundred thousand dollars ($1,700,000).

(b) The sum of one million five hundred eighty thousand dollars ($1,580,000) is hereby transferred from the State Energy Conservation Assistance Account in the General Fund to the Energy Resources Program Account in the General Fund. Item 3360-001-465 of the Budget Act of 1990 is hereby augmented by the sum of one million five hundred eighty thousand dollars ($1,580,000).

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 provide for urgently needed local energy conservation programs at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 968

An act to add Sections 507.5 and 29206 to the Elections Code, relating to elections.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 507.5 is added to the Elections Code, to read:

507.5. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 507, any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, shall personally sign and affix directly on the affidavit of registration the telephone number of the person, company, or organization who agrees to pay money or other valuable consideration for the completed affidavit of registration.

(b) Any person, company, or other organization who agrees to pay money or other valuable consideration to any person who assists another person to register to vote by receiving the completed affidavit of registration, shall maintain a list of the names, addresses, and telephone numbers of all individuals that the person, company, or other organization has agreed to compensate for assisting others to register to vote.

(c) Failure to comply with subdivision (a) shall not cause the invalidation of the registration of the voter.

(d) No person, company, or other organization who agrees to pay money or other valuable consideration to any person to assist another to register to vote by receiving the completed affidavit of registration shall render the payment or promised consideration unless the information specified in subdivision (a) has been affixed personally on the affidavit by the person with whom the agreement for payment was made.

SEC. 2. Section 29206 is added to the Elections Code, to read:

29206. Any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, and fails to

provide the information required by Section 507.5, is guilty of a misdemeanor.

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 969

An act to add Division 4.5 (commencing with Section 29500) to Title 4 of the Corporations Code, relating to the California Commodity Law of 1990.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990.]

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

SECTION 1. It is the intent of the Legislature to protect investors from fraudulent commodities transactions while recognizing the interests of those engaged in legitimate commodities transactions by filling a regulatory void with respect to the offer and sale of commodities and commodity contracts, as defined herein, due to the lack of jurisdiction over cash transactions in commodities and commodity contracts by the Commodity Futures Trading Commission under the federal Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.), the Securities and Exchange Commission under the federal securities laws, and the Department of Corporations under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

SEC. 2. Division 4.5 (commencing with Section 29500) is added to Title 4 of the Corporations Code, to read:

DIVISION 4.5. COMMODITIES

CHAPTER 1. DEFINITIONS

29500. This division shall be known and may be cited as the "California Commodity Law of 1990." References herein to "this law" refer to the applicable provisions of this division unless the context otherwise requires. The definitions in this chapter govern the construction of this law.

29501. "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

29502. "Business days" are all days other than every Saturday, every Sunday and such other days as are specified or provided for as holidays in the Government Code.

29503. "Commissioner" means the Commissioner of Corporations.

29504. "Commodity" means, except as otherwise specified by the commissioner by rule or order, any agricultural, grain, or livestock product or byproduct, any metal or mineral (including a precious metal set forth in Section 29514), any gem or gemstone (whether characterized as precious, semiprecious, or otherwise), any fuel (whether liquid, gaseous, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. However, the term "commodity" shall not include (a) a numismatic coin whose fair market value is at least 15 percent higher than the value of the metal it contains, or (b) any work of art offered or sold by art dealers, at public auction, or through a private sale by the owner of the work of art.

29505. "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A "commodity contract" includes a commodity option as defined in Section 29510, unless otherwise specified. Any "commodity contract" offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A "commodity contract" shall not include any contract or agreement which requires, and under which the purchaser personally receives, or at the request of the purchaser a family member or an individual with whom the purchaser has a preexisting personal or business relationship personally receives, within 28 calendar days from the full payment in good funds of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

29506. "Commodity Exchange Act" means the federal statute so named, as amended before or after January 1, 1991.

29507. "Commodity Futures Trading Commission" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

29508. "CFTC Rule" means any rule, regulation, or order of the

Commodity Futures Trading Commission in effect on January 1, 1991, and all subsequent amendments, additions, or other revisions thereto, unless the commissioner, within 10 days following the effective date of any amendment, addition, or revision, disallows the application thereof to this law or to any provision thereof by rule or order.

29509. "Commodity merchant" means any of the following, as defined or described in the Commodity Exchange Act or by CFTC Rule:

(a) Futures commission merchant.

(b) Commodity pool operator.

(c) Commodity trading adviser.

(d) Introducing broker.

(e) Leverage transaction merchant.

(f) An associated person of any person specified in subdivisions (a) to (d), inclusive.

(g) Floor broker.

(h) Any other person (other than a futures association) required to register with the Commodity Futures Trading Commission.

29510. "Commodity option" means any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise, but shall not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission.

29511. "Financial institution" means (a) a national bank or a bank or trust company incorporated under the laws of this state, (b) a federal savings and loan association or federal savings bank, or (c) a federally insured bank chartered by a state of the United States when the commodity depository activities of the bank are supervised by the bank regulator of that state.

29512. "Good funds" means the verified receipt of immediately available funds according to the applicable requirements of federal Regulation CC.

29513. "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

29514. "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.

29515. "Precious metal" means the following in either coin, bullion, or other form:

(a) Silver.

(b) Gold.

(c) Platinum.

(d) Palladium.

(e) Copper.

(f) Other items that the commissioner may specify by rule or order.

29516. "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

CHAPTER 2. UNLAWFUL COMMODITY TRANSACTIONS

29520. Except as otherwise provided in Section 29530, 29531, or 29532, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option, or offer to enter into, or enter into, as seller or purchaser any commodity contract or any commodity option.

CHAPTER 3. EXEMPTIONS

29530. (a) The prohibitions in Section 29520 shall not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(1) A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require registration.

(2) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subdivision (a).

(3) A person who is a member of a contract market designated by the Commodity Futures Trading Commission (or any clearinghouse thereof).

(4) A financial institution.

(5) A broker-dealer licensed under Section 25211, or exempt from licensure under Section 25200, when engaging in activities subject to the exclusive regulatory jurisdiction of the Commodity Futures Trading Commission.

(6) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if (A) the license has not expired or been surrendered, suspended, or revoked, (B) the licensed person has a tangible net worth of at least 3 million dollars ($3,000,000) according to its audited financial statements prepared by an independent certified public accountant for each of the immediately preceding three fiscal years, and (C) pursuant to the provisions of subdivision (b) of Section 29531, the licensed person issues and a purchaser receives a certificate, document of title, confirmation, or other instrument evidencing that the purchased quantity of precious metals or foreign currencies has been delivered to a depository which is a financial institution located in a state of the United States.

(b) The exemption provided by subdivision (a) shall not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC Rule.

29531. The prohibitions in Section 29520 shall not apply to the following:

(a) An account, agreement, or transaction within the exclusive regulatory jurisdiction of the Commodity Futures Trading Commission as granted under Section 2 of Title 42 of the United States Code (Section 2(a)(1)(A) of the Commodity Exchange Act).

(b) A commodity contract for the purchase of one or more precious metals or foreign currencies which requires, and under which the purchaser receives, within 28 calendar days from the full payment in good funds of the purchase price, physical delivery of the quantity of the precious metals or foreign currencies purchased, or a commodity contract for the purchase of one or more precious metals or foreign currencies which allows, and under which the purchaser receives, within 28 calendar days from the partial payment in good funds of the purchase price, physical delivery of the quantity of precious metals or foreign currencies purchased by that payment; provided that, for purposes of this subdivision, physical delivery shall be deemed to have occurred if, within the 28-day period, the quantity of precious metals or foreign currencies purchased by that payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either (1) a financial institution, (2) a depository, the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission, (3) a storage facility licensed or regulated by the United States or any agency thereof, or (4) a facility for the storage of precious metals or foreign currencies located within a state of the United States and operated by an armored contract carrier defined under subdivision (e), or (5) a depository designated by the commissioner, and that depository (or other person which itself qualifies as a depository) issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.

(c) A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any byproduct thereof.

(d) A commodity contract under which the offeree or the purchaser is a person referred to in Section 29530, an insurance company, or an investment company as defined in Section 80a-3 of Title 15 of the United States Code (Section 3 of Title I of the federal Investment Company Act of 1940).

(e) For the purposes of this section, "armored contract carrier" means a person who: (1) is operating as a carrier transporting coin, currency, precious metals, securities, or negotiable items pursuant to

a currently effective permit as a highway contract carrier and a city carrier issued by the Public Utilities Commission of this state and is also operating a facility for the storage of precious metals or foreign currencies pursuant to a commodity contract; (2) has purchased and maintains sufficient amounts of insurance coverage for all risks associated with the operation of a facility for the storage of precious metals or foreign currencies from an insurance company admitted in this state; (3) has continuously operated as a carrier under its permit and has continuously operated a facility for the storage of precious metals or foreign currencies for at least five years; (4) has a tangible net worth of at least five million dollars ($5,000,000) for each of the immediately preceding five fiscal years according to its financial statements prepared on an individual company basis, or on a combining or consolidating basis with any affiliates, which financial statements have been audited by an independent certified public accountant; and (5) provides the following disclosure to a purchaser in 10-point bold face type with the certificate, document of title, confirmation, or other instrument evidencing that the purchased quantity of precious metals or foreign currencies has been delivered to or is on deposit with the storage facility: "(Name of carrier) is not licensed, regulated, or supervised as a depository or storage facility by the United States Government or the State of California."

29532. The commissioner may by rule or order prescribe the terms and conditions of all transactions and contracts covered by this law and exempt any person or transaction from this law conditionally or unconditionally.

CHAPTER 4. UNLAWFUL ACTIVITIES AND FRAUDULENT CONDUCT

29535. (a) No person shall engage in a trade or business or otherwise act as a commodity merchant unless the person (1) is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting that person as a commodity merchant and the registration or temporary license shall not have expired, been suspended, or revoked; or (2) is exempt from the registration by virtue of the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or of a CFTC rule.

(b) No board of trade shall trade, or provide a place for the trading of, any commodity contract required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission, unless the board of trade has been so designated for the commodity contract and that designation shall not have been vacated, suspended, or revoked.

29536. It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into, a commodity, commodity contract, or commodity option to do any of the following:

(a) To willfully employ any device, scheme, or artifice to defraud.

(b) To willfully make any false report, enter any false record, make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) To willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons.

(d) To willfully misappropriate or convert the funds, security, or property of any other person.

29537. (a) Sections 29520, 29535, and 29536 apply to persons who sell or offer to sell when either of the following occur:

(1) An offer to sell is made in this state.

(2) An offer to buy is made and accepted in this state.

(b) Sections 29520, 29535, and 29536 apply to persons who buy or offer to buy when either of the following occur:

(1) An offer to buy is made in this state.

(2) An offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(1) Originates from this state.

(2) Is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

(1) Is communicated to the offeror in this state.

(2) Has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when either of the following occur:

(1) The publisher circulates or there is circulated on his or her behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months.

(2) A radio or television program originating outside this state is received in this state.

CHAPTER 5. POWERS OF THE COMMISSIONER

29540. (a) Whenever it appears to the commissioner that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this law or any rule or order under this law, the commissioner may in his or her discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order under this law. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

29541. (a) The commissioner in his or her discretion (1) may make public or private investigations within or outside of this state that the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this law or any rule or order hereunder, or to aid the enforcement of this law or in the prescribing of rules and forms under this law, and (2) may publish information concerning any violation of this law or a rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this law, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring him or her

to appear before the commissioner or the officer designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(d) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture. However, no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after validly claiming his or her privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

29542. (a) If, in the opinion of the commissioner, any person is engaging in any activity in violation of any provision of this law, or rule or order under this law, the commissioner may order the person to desist and refrain from the activity unless and until the activity will not be in violation of any provision of this law or any rule or order under this law.

(b) If after an order has been made under subdivision (a), a request for hearing is filed in writing within one year of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5, (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under the Administrative Procedure Act. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 29563.

29543. The commissioner may refer the evidence that is available concerning any violation of this law, or of any rule or order under this law, to the Attorney General or the district attorney of the county in which the violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings under this law. The commissioner and the commissioner's counsel, deputies, or assistants may, upon request of the Attorney General or the district attorney, assist the prosecutor in presenting the law or facts at the trial.

29544. (a) Any person who willfully violates any provision of this

law, or who willfully violates any rule or order under this law, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

The penalty collected shall be paid to the Commodity Merchant Account of the General Fund to be used for the support of this division. The fees collected by the commissioner under subdivision (a) of Section 29570 shall be reduced by the amount available for appropriation from the penalties collected under this section and paid to the Commodity Merchant Account of the General Fund.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce this division.

(c) No action shall be maintained to enforce any liability created under subdivision (a) unless brought before the expiration of four years after the act or transaction constituting the violation.

29545. (a) The commissioner may take actions that are authorized by Section 9a of Title 7 of the United States Code (Section 6d of the federal Commodity Exchange Act) as amended before or after the effective date of this section.

(b) Nothing in this section shall be construed as a limitation on the powers of the commissioner under this act or any other law administered by the commissioner.

29546. The commissioner in his or her discretion may honor requests from interested parties for interpretive opinions.

CHAPTER 6. CRIMES AND CIVIL LIABILITY

29550. (a) Except as provided in subdivision (b), any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or imprisoned in the state prison or in a county jail for not more than one year, or be punished by both a fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 29536 shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000), or imprisoned in the state prison for two, three, or four years, or be punished by both a fine and imprisonment.

(c) One-half of the fines collected under this section shall be paid to the Commodity Merchant Account of the General Fund to be used for the support of this division. The remainder of the fines collected under this section shall be paid to the state or local agency which brought the criminal prosecution. The fees collected by the commissioner under subdivision (a) of Section 29570 shall be

reduced by the amount available for appropriation from the fines collected under this section and paid to the Commodity Merchant Account of the General Fund.

29551. Nothing in this law limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

29552. Any person who materially assists in any violation of this law, or any rule or order of the commissioner under this law, is jointly and severally liable with any other person liable under this law for the violation.

29553. No action shall be maintained to enforce any liability under Section 29552 unless brought before the expiration of four years after the act or transaction constituting the violation or within one year after the discovery by the plaintiff of the facts constituting the violation, whichever occurs last.

29554. Every cause of action under this law survives the death of any person who might have been a plaintiff or defendant.

29555. Except as explicitly provided in this law, no civil liability in favor of any private party shall arise against any person by implication from, or as a result of, the violation of any provision of this law or any rule or order under this law. Nothing in this law shall limit any liability which may exist by virtue of any other statute or under common law if this law were not in effect.

CHAPTER 7. MISCELLANEOUS PROVISIONS

29560. No provision of this law imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, permit, order, or written interpretive opinion of the commissioner, or any written interpretive opinion of the Attorney General, notwithstanding that the rule, form, permit, order, or written interpretive opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

29561. The commissioner may from time to time make, amend, and rescind the rules, forms, and orders that are necessary to carry out this law, and define any terms, whether or not used in this law, insofar as the definitions are not inconsistent with this law. For the purpose of rules, the commissioner may classify commodities, commodity contracts, commodity options, and persons within the commissioner's jurisdiction and may prescribe different requirements for different classes. The commissioner may, in the commissioner's discretion, waive any requirement of any rule or form in situations where in his or her opinion the requirement is not necessary in the public interest.

29562. In any proceeding under this law, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

29563. Every final order, decision, certificate, registration, or

other official act of the commissioner is subject to judicial review in accordance with law.

29564. Nothing in this law, shall impair, derogate, or otherwise affect the authority or powers of the commissioner under the Corporate Securities Law of 1968 (Part 3 (commencing with Section 25000)) or the application of any provision thereof to any person or transaction subject thereto.

29565. If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this law which can be given effect without the invalid provision or application, and to this end this law is declared to be severable.

29566. Neither the commissioner nor any employee of the commissioner shall use any information which is filed with or obtained by the commissioner which is not public information for personal gain or benefit, nor shall the commissioner nor any employee of the commissioner engage in any securities or commodity transaction based on that information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate that information.

CHAPTER 8. NOTICE AND FEE

29570. (a) The commissioner shall maintain a list of all commodity merchants who are transacting business in this state. Accordingly, each commodity merchant who is transacting business in this state, other than an associated person as defined in subdivision (f) of Section 29509, shall by January 15th of each year: (1) file a notice of transacting business in this state with and in the form prescribed by the commissioner; and (2) pay a fee fixed by the commissioner of not more than three hundred fifty dollars ($350) for each office with an address in this state, or if no offices have an address in this state, then a fee of not more than three hundred fifty dollars ($350). The maximum fee to be paid under this subdivision by a commodity merchant who is also a broker-dealer licensed under Section 25211 is three thousand five hundred dollars ($3,500). As used in this section, a commodity merchant is "transacting business in this state" if subject to Section 29520 or exempt from Section 29520 by virtue of Section 29530, 29531, or 29532.

(b) Sections 29540, 29541, 29542, 29543, 29544, 29550, and 29552 do not apply to a commodity merchant whose only violation of this law is a failure to file the notice or pay the fee required by subdivision (a).

(c) The commissioner shall be entitled to recover the costs of collection of the fee under subdivision (a), including reasonable attorney's fees, for a failure of a commodity merchant to file the notice and pay the fee under subdivision (a).

29571. (a) Each person who is telephonic seller of a commodity or a commodity contract shall by January 15th of each year: (1) file

a notice with and in the form prescribed by the commissioner; and (2) pay a fee fixed by the commissioner of not more than three hundred fifty dollars ($350) for each office with an address in this state up to a maximum fee of three thousand five hundred dollars ($3,500), or if no offices have an address in this state, a fee of not more than three hundred fifty dollars ($350).

(b) As used in this section, a "telephonic seller of a commodity or a commodity contract" or "seller" is a person who: (1) is subject to the jurisdiction of this law under Section 29520 and not exempt from the application of Section 29520 by virtue of Sections 29530, 29531, or 29532; and (2) directly or indirectly, or through others, by use of telephone or telephone transceiving equipment, or through the use of an automatic dial-announcing device as defined in Section 2871 of the Public Utilities Code, sells or offers to sell or purchase any commodity under any commodity contract or under any commodity option, or enters into, or offers to enter into, as a seller or purchaser, any commodity contract or any commodity option.

(c) A seller who fails to file the notice and pay the fee as required by this section shall pay a penalty of twenty thousand dollars ($20,000). In addition to the other powers and remedies available to the commissioner, the commissioner shall be awarded costs and reasonable attorney's fees if the commissioner prevails in an action to collect the fee and penalty under this section.

(d) For purposes of this section, a "telephonic seller of a commodity or a commodity contract" or "seller" does not include any of the following:

(1) A person who is a commodity merchant who files the notice and pays the fee under Section 29570.

(2) A person offering or selling a security qualified under Section 25110, 25120, or 25130 or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 when the solicited transaction is governed by that law. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Corporations does not create an exemption under this paragraph.

(3) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the solicited transaction is governed by that law.

(4) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code when the solicited transaction is governed by that law.

(5) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(6) A person offering or selling a franchise registered pursuant to Section 31110 or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4

when the solicited transaction is governed by that law. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Corporations does not create an exemption under this paragraph.

(7) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Secretary of State or other designated official the documents required by Section 1812.203 of the Civil Code.

(8) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.

(9) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(10) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3 of the Business and Professions Code.

(11) A person licensed pursuant Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code when acting pursuant to that licensure.

(12) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(13) A person or an affiliate of a person whose business is regulated by the Public Utilities Commissioner.

(14) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars ($100).

(15) An issuer or subsidiary of an issuer that has a class of securities which is subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78*l*) and which is either registered or exempt from registration under subparagraph (A), (B), (C), (E), (F), (G), or (H) of paragraph (2) of subdivision (9) of that section.

(16) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(17) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or

temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, (7 U.S.C. Sec. 1 et seq.) and the registration or license has not expired or been suspended or revoked.

(18) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the persons primary business and sales made telephonically makeup less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3 of the Business and Professions Code, as applicable, and subdivision (p) of Section 17511.4 of the Business and Professions Code.

(19) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if the license has not expired or been suspended or revoked when the solicited transaction is governed by that law.

29572. (a) There is hereby established in the General Fund a Commodity Merchant Account. All fees collected by the Commissioner of Corporations under Section 29570 shall be deposited into the Commodity Merchant Account of the General Fund for the support of the program established by this division, and shall be available for expenditure when appropriated by the Legislature.

(b) There is hereby established in the General Fund a Telephonic Seller of a Commodity or a Commodity Contract Account. All fees collected by the Commissioner of Corporations under Section 29571 shall be deposited into the Telephonic Seller of a Commodity or a Commodity Contract Account of the General Fund for the support of the program established by this division, and shall be available for expenditure when appropriated by the Legislature.

SEC. 3. The Commissioner of Corporations shall adopt emergency regulations to implement Section 2 of this act.

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.

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 970

An act to amend Sections 1220 and 1300 of the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. The intent of the Legislature in enacting this act is to raise additional revenues which shall be used by the State Department of Health Services to ensure the high quality and accuracy of all laboratory testing done in California and to assist in the implementation of the Federal Clinical Laboratory Improvement Act of 1988. Any facility conducting laboratory tests and providing test results regarding the physical condition of human beings should be required to meet minimum standards for personnel, sanitation, equipment and procedures. These requirements should apply uniformly to all testing facilities, whether licensed by the department or conducting that testing as unlicensed laboratories.

SEC. 2. Section 1220 of the Business and Professions Code is amended to read:

1220. (a) The department shall by regulation require that all clinical laboratories maintain records, equipment, and facilities which are adequate and appropriate for the services rendered and demonstrate satisfactory performance in a proficiency testing program approved by the department. In addition, the department shall by regulation require that all clinical laboratories be conducted, maintained, and operated without injury to the public health.

(b) The department shall conduct inspections of licensed clinical laboratories no less than once every two years. The department shall maintain a record of those inspections and shall ensure that every licensed clinical laboratory in California is inspected at least that often.

(c) The department shall develop quality assurance regulations governing the testing done in laboratories which are exempt from licensure pursuant to subdivision (b) of Section 1241. In addition, the department shall insure compliance with proficiency testing requirements.

(d) Except as provided in subdivision (e), any person operating

a laboratory which is exempt from licensure pursuant to subdivision (b) of Section 1241 shall, prior to conducting any laboratory test, register with the State Department of Health Services by providing the department with the name and address of the business or person operating as an exempt laboratory, a list of laboratory equipment used to perform tests, and a list of the tests to be done in the facility.

(e) Any person operating a laboratory described in subdivision (d) on January 1, 1991, shall cease to operate such a facility on January 1, 1992, unless the requirements of this section are met.

SEC. 3. Section 1300 of the Business and Professions Code is amended to read:

1300. The amount of application and license fee under this chapter shall be as follows:

(a) The application fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars ($38). This fee shall be sixty-three dollars ($63) commencing on July 1, 1983.

(b) The annual renewal fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars ($38). This fee shall be sixty-three dollars ($63) commencing on July 1, 1983.

(c) The application fee for a clinical laboratory technologist's or limited technologist's license is twenty-three dollars ($23). This fee shall be thirty-eight dollars ($38) commencing on July 1, 1983.

(d) The application and annual renewal fee for a cytotechnologist's license shall be fifty dollars ($50) commencing on January 1, 1991.

(e) The annual renewal fee for a clinical laboratory technologist's or limited technologist's license is fifteen dollars ($15). This fee shall be twenty-five dollars ($25) commencing on July 1, 1983.

(f) The application fee for a clinical laboratory license is six hundred dollars ($600); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county, or city and county, or an official thereof, no fee shall be required.

(g) The annual renewal fee for a clinical laboratory license is five hundred fifty-seven dollars ($557); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county, or city and county, or official thereof, no fee shall be required.

(h) In addition, clinical laboratories providing cytology services shall pay an annual fee which shall be set by the department in an amount needed to meet but not exceed the department's costs of proficiency testing and special site surveys for these laboratories, and which shall be based upon the volume of cytologic slides examined by a laboratory. If the amount collected is less than or exceeds the amount needed for these purposes, the amount of fees collected from those laboratories in the following year shall be adjusted accordingly.

(i) The application fee for a trainee's license is eight dollars ($8). This fee shall be thirteen dollars ($13) commencing on July 1, 1983.

(j) The annual renewal fee for a trainee's license is five dollars ($5). This fee shall be eight dollars ($8) commencing on July 1, 1983.

(k) The application fee for a duplicate license is three dollars ($3). This fee shall be five dollars ($5) commencing on July 1, 1983.

(*l*) The delinquency fee is equal to the annual renewal fee.

(m) The director may establish a fee for examinations required under this chapter. The fee shall not exceed the total cost to the department in conducting the examination.

CHAPTER 971

An act to amend Section 56486 of the Government Code, relating to local agency formation commissions.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 56486 of the Government Code, as amended by Chapter 710 of the Statutes of 1989, is amended to read:

56486. (a) The legislative body of each affected district shall appoint one or more members, not to exceed the maximum number specified by the commission, to represent the district on the reorganization committee. That legislative body may remove and replace any member previously appointed by it, and may fill any vacancy in its membership upon the committee.

(b) In the case of a reorganization committee created pursuant to subdivision (b) of Section 56476, the county board of supervisors shall appoint one or more members, not to exceed the maximum number specified by the commission, to represent the county on the reorganization committee. The county board of supervisors may appoint any person, including, but not limited to, an officer or employee of the county to represent the county on the reorganization committee. The county board of supervisors may remove and replace any member previously appointed by it, and may fill any vacancy in its membership on the committee.

(c) In the case of a reorganization committee created pursuant to subdivision (b) of Section 56476, the commission shall appoint one or more members to represent the general public on the reorganization committee. The number of members appointed to represent the general public shall not exceed the maximum number specified by the commission to represent the county or each subject district. A member appointed pursuant to this subdivision shall not be an officer or employee of any local agency. The commission may remove and replace any member previously appointed by it, and may fill any

vacancy in its membership on the committee.

CHAPTER 972

An act to amend Section 10056 of, and to add Section 10056.1 to, the Health and Safety Code, relating to vital statistics.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 10056 of the Health and Safety Code is amended to read:

10056. The local registrar of births and deaths shall carefully examine each certificate before acceptance for registration and, if any are not completed in a manner consistent with the policies estabished by the State Registrar, he or she shall require further information to be furnished as may be necessary to make the record consistent with those policies before acceptance for registration.

SEC. 2. Section 10056.1 is added to the Health and Safety Code, to read:

10056.1. The local registrar of marriages shall carefully examine each certificate before acceptance for registration and, if it is incomplete or unsatisfactory, he or she shall require any further information to be furnished as may be necessary to make the record satisfactory before acceptance for registration.

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. 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 973

An act to add Chapter 22.5 (commencing with Section 22600) to Division 8 of the Business and Professions Code, and to add Section 728.4 to the Public Utilities Code, relating to facsimile telephone numbers.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Chapter 22.5 (commencing with Section 22600) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 22.5. COMMERCIAL DIRECTORIES

22600. (a) Every publisher shall, prior to including a telephone number for a facsimile machine in any commercial directory of telephone numbers, obtain the written consent of the subscriber who has been assigned the number unless the telephone number for the facsimile machine is obtained from a telephone corporation's alphabetical or classified directory of telephone numbers.

(b) As used in this section:

(1) "Commercial directory" does not include an alphabetical directory of telephone numbers or a classified directory published by a telephone corporation.

(2) "Telephone number for a facsimile machine" means any number designated in a directory as being for a facsimile machine or any number included in a directory represented to be a directory of telephone numbers for facsimile machines.

(c) Every publisher shall notify, in writing, all of the subscribers of the facsimile telephone numbers printed in the publisher's directory of the requirements of this chapter on or before April 1, 1991. Unless the subscriber thereafter notifies the publisher otherwise, telephone numbers for facsimile machines published prior to July 1, 1991, without the written consent of the subscriber, may continue to be published by that publisher. Upon notification by the subscriber that he or she desires to be excluded from the directory, all subsequent volumes of the directory shall exclude the subscriber's facsimile telephone number.

(d) Every violation of subdivision (a) is an infraction punishable by a fine of five hundred dollars ($500).

SEC. 2. Section 728.4 is added to the Public Utilities Code, to read:

728.4. A telephone corporation shall list a telephone number as the number for a facsimile machine in its alphabetical or classified directory only if requested to do so by the subscriber.

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 974

An act to amend Section 1622.6 of, to amend, repeal, and add Section 1624 of, and to add Sections 1624.01, 1624.02, and 5096.8 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 1622.6 of the Revenue and Taxation Code is amended to read:

1622.6. An application for equalization filed pursuant to Section 1603 by a member or alternate member of an assessment appeals board shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.

A special alternate assessment appeals board member may hear only the application or applications for equalization set forth in the superior court order appointing such member.

Any person shall be eligible for appointment as a special alternate assessment appeals board member who is a resident of the county in which the application is filed and who meets the qualifications set forth in Section 1624.

Sections 1624.1 and 1624.2 shall be applicable to the appointment of a special assessment appeals board member.

SEC. 1.3. Section 1624 of the Revenue and Taxation Code is amended to read:

1624. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, or is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal

and taxation.

(b) Notwithstanding Section 1624.05, in a county of the 11th class, as least 10 years' service on an assessment appeals board may constitute the requisite experience to be eligible for renomination to the board.

(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 modifies that date.

SEC. 1.5. Section 1624 is added to the Revenue and Taxation Code, to read:

1624. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he or she has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, or is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation.

(b) This section shall become operative on January 1, 1996.

SEC. 2. Section 1624.01 is added to the Revenue and Taxation Code, to read:

1624.01. (a) On and after January 1, 1992, any person newly selected for membership on, or newly appointed to be a member of, an assessment appeals board is encouraged to and may complete the training described in Section 1624.02 prior to the commencement of their term on the board or as soon as reasonably possible within one year thereafter.

(b) Any person who is a member of an assessment appeals board on and after January 1, 1992, and whose term commenced before January 1, 1992, is encouraged to and may complete the training described in Section 1624.02 before January 1, 1993.

SEC. 3. Section 1624.02 is added to the Revenue and Taxation Code, to read:

1624.02. Every member of an assessment appeals board is encouraged to and may successfully complete a course of training developed and conducted by the State Board of Equalization. Training shall include, but not be limited to, an overview of the assessment process, and new developments in case and statutory law, and administrative rules. The curriculum for the course of training shall be developed by the State Board of Equalization in consultation with county boards of supervisors and administrators of assessment appeals boards. For purposes of this section, the term "successfully complete" shall include full-time attendance at the course of training and a person's receiving a passing grade in an examination given by the State Board of Equalization at the conclusion of the course of training.

SEC. 4. Section 5096.8 is added to the Revenue and Taxation Code, to read:

5096.8. (a) In the case where a reduction in a base year value of real property results in a supplemental assessment for the value of the reduction being levied and charged to a subsequent owner of that property, that portion of any refund, due and owing to a former owner of that property, in the amount of the taxes on the reduction in base value after the former owner sold or transferred ownership of the property, shall be applied to satisfy that supplemental assessment.

(b) Any person claiming a refund due to a reduction in base year value shall certify under penalty of perjury whether he or she has sold or transferred ownership of the property to any other person, and if so, the date of sale or transfer.

(c) This section shall not apply in any county unless the board of supervisors adopts a resolution by majority vote to make the provisions of this section applicable in the county.

CHAPTER 975

An act to amend Section 652.5 of, and to add Section 651.1 to, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 651.1 is added to the Harbors and Navigation Code, to read:

651.1. As used in this chapter, unless the context clearly requires a different meaning, "bather" or "bathing" means a person floating, swimming, wading, or bodysurfing, with or without the use of a flotation device, including, but not limited to, floating upon or with the aid of a surfboard, paddle board, surfmat, innertube, life preserver, or air mattress, except a flotation device which is designed to be propelled by sail, mechanical means, power, oars, or paddle.

SEC. 2. Section 652.5 of the Harbors and Navigation Code is amended to read:

652.5. (a) The use of a distinctive blue light as prescribed by the department is reserved for law enforcement vessels and may be displayed during the day or night whenever the vessel may be engaged in direct law enforcement activities, including, but not limited to, those activities specified in subdivision (a) of Section 663.7, where identification of a law enforcement vessel is desirable or where necessary for safety reasons.

(b) That light when used shall be in addition to prescribed lights and day signals required by law.

(c) The display of such blue lights on vessels for other purposes is prohibited.

(d) Any vessel approaching, overtaking, being approached, or being overtaken by a moving law enforcement vessel operating with a siren or an illuminated blue light, or any vessel approaching a stationary law enforcement vessel displaying an illuminated blue light, shall immediately slow to a speed sufficient to maintain steerage only, shall alter its course, within its ability, so as not to inhibit or interfere with the operation of the law enforcement vessel, and shall proceed, unless otherwise directed by the operator of the law enforcement vessel, at the reduced speed until beyond the area of operation of the law enforcement vessel.

(e) The operator of every cable ferry shall take whatever reasonable action is necessary to provide a clear course for any law enforcement vessel operating with a siren or an illuminated blue light, or both.

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 976

An act to amend Section 459 of the Health and Safety Code, to amend Section 4329 of the Penal Code, to amend Section 20134 of the Public Contract Code, and to amend Section 6.5 of Chapter 1519 of the Statutes of 1986, relating to corrections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 459 of the Health and Safety Code is amended to read:

459. The county health officer shall investigate health and sanitary conditions in every county jail, every other publicly operated detention facility in the county, and all private work furlough facilities and programs established pursuant to Section 1208 of the Penal Code, at least annually. Private work furlough facilities and programs shall pay an annual fee to the county health officer commensurate with the annual cost of those investigations, as determined by the county health officer. He or she may make

additional investigations of any county jail or other detention facility of the county as he or she may determine are necessary. He or she shall submit his or her report to the Board of Corrections, the sheriff or other person in charge of the jail or detention facility, and to the board of supervisors. In any city having a health officer, the health officer shall investigate health and sanitary conditions in every city jail and other detention facility at least annually. He or she may make the additional investigations of any city jail or detention facility as he or she may determine are necessary. He or she shall submit his or her report to the Board of Corrections, the person in charge of the jail or detention facility, and to the governing body of the city.

Whenever so requested by the sheriff, the chief of police, local legislative body, or the Board of Corrections, but not more often than twice annually, the county health officer or, in cities having a city health officer, the city health officer, shall investigate health and sanitary conditions in any of the jails and detention facilities described in this section, and submit his or her report to each of the officers and agencies authorized in this section to request the investigation and to the Board of Corrections.

The investigating officer shall determine if the food, clothing, and bedding is of sufficient quantity and quality which at least shall equal minimum standards and requirements prescribed by the Board of Corrections for the feeding, clothing and care of prisoners in all county, city and other local jails and detention facilities, and if the sanitation requirements required by Article 8 (commencing with Section 27670), Chapter 4 of, Division 22 for restaurants have been maintained.

SEC. 2. Section 4329 of the Penal Code is amended to read:

4329. No commission established pursuant to Section 4325 or any county jail industry program conducted under the authority of a commission, shall remain in existence for more than four years from the date of its establishment.

SEC. 3. 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. If the board does not select the lowest bid, it shall make a finding stating the reasons that the lowest bid was not 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. 4. Section 6.5 of Chapter 1519 of the Statutes of 1986, as amended by Chapter 1327 of the Statutes of 1989, 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 facilities. The board of supervisors shall determine the location of any detention facilities pursuant to a master plan, if any, and that determination shall not be subject to any initiative or ordinance adopted by initiative. This restriction on the use of the initiative to determine the location of county detention facilities shall not limit the use of a referendum of a decision of the board of supervisors on the location of county detention facilities. 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. 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.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assure that any commission or program commenced under Chapter 2.5 (commencing with Section 4325) of Title 4 of Part 3 of the Penal Code will not terminate, as would be the case pursuant to these provisions for a commission or program in existence for two years, and to clarify the authority of a county board of supervisors to determine the location of county detention facilities, it is necessary for this act to take effect immediately.

CHAPTER 977

An act to add Division 23.5 (commencing with Section 33500) to the Public Resources Code, relating to recreation and open-space lands.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Division 23.5 (commencing with Section 33500) is added to the Public Resources Code, to read:

DIVISION 23.5. COACHELLA VALLEY MOUNTAINS CONSERVANCY

CHAPTER 1. ESTABLISHMENT AND PURPOSES

33500. The Legislature hereby finds and declares that the Santa Rosa Mountains, the San Jacinto Mountains, and the Indio Hills, all of which surround the Coachella Valley in Riverside County, constitute unique and important open-space, environmental, anthropological, cultural, scientific, educational, recreational, scenic, and wildlife resources that should be held in trust for the enjoyment of, and appreciation by, present and future generations.

33501. The Coachella Valley Mountains Conservancy is hereby created to acquire and hold, in perpetual open space, mountainous lands surrounding the Coachella Valley and to provide for the public's enjoyment of, and the enhancement of their recreational and educational experiences on, those lands in a manner consistent

with the protection of these lands and the resource values specified in Section 33500.

33502. (a) The territory of the conservancy consists of that portion of Riverside County bounded by a line commencing at the intersection of the highest elevation of the San Jacinto Mountains and the range line common to R.2 E. and R.3 E., S.B.M., in the vicinity of the headwaters of the West Fork of Snow Creek; thence north along that range line to its intersection with the San Bernardino-Riverside County boundary, thence east along the San Bernardino-Riverside County boundary to its intersection with the western boundary of Joshua Tree National Monument; thence south and east along the western and southern boundaries of Joshua Tree National Monument to the intersection of the southern boundary with the range line common to R.8 E. and R.9 E., S.B.M.; thence south along that range line to its intersection with the San Diego-Riverside County boundary; thence west along the San Diego-Riverside County boundary to its intersection with the highest elevation of the Santa Rosa Mountains east of the summit of Rabbit Peak; thence meandering northwest and north along the points of highest elevation of the Santa Rosa and San Jacinto Mountains to the point of beginning; and as more specifically set forth in that certain map entitled "Coachella Valley Mountains Conservancy" and dated May 31, 1989, and placed on file with the Secretary of State, which map is incorporated in this subdivision by this reference.

(b) The governing board of the conservancy may adjust the boundary delineating the territory of the conservancy, but not by more than 500 yards from the boundary as mapped pursuant to subdivision (a), to embrace within the conservancy adjacent lands that have any of the resource values specified in Section 33500. Any adjustment in the boundary shall be reflected in a revision to the map specified in subdivision (a), which revision shall be promptly filed with the Secretary of State.

33503. The governing board of the conservancy consists of 15 voting members and five ex officio members.

(a) The voting members consist of the following:

(1) The mayor or a member of the city council of each of the Cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage, appointed by a majority of the membership of the respective city council of each city.

(2) The Chairman of the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

(3) Two members of the Board of Supervisors of the County of Riverside, appointed by a majority of the membership of the board of supervisors.

(4) Three members chosen from the general public residing in the conservancy's territory, one of whom shall be appointed by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly.

(b) The ex officio, nonvoting members consist of the following officers or an employee of each entity designated annually by the officer to represent him or her:

(1) The Director of Fish and Game.

(2) The Director of the Wildlife Conservation Board.

(3) The Director of Parks and Recreation.

(4) The State Director for California of the United States Bureau of Land Management.

(5) The Regional Forester for the Pacific Southwest Region of the United States Forest Service.

33504. (a) The voting membership of the governing board shall be expanded from time to time as additional cities, lying within the territory of the conservancy, are incorporated. At the time incorporation is effective, the city shall become entitled to appoint a voting member, as provided in subdivision (a) of Section 33503, and the quorum requirement set forth in Section 33507 shall become void and, instead, the quorum shall be a majority of the voting members of the governing board.

(b) The county's voting membership on the governing board shall be changed if the number of supervisorial districts lying wholly or partially within the territory of the conservancy changes as a result of a reapportionment. At the time that the reapportionment is effective, the county shall be entitled to appoint as many voting members as there are supervisorial districts lying wholly or partially within the territory of the conservancy, as provided in subdivision (a) of Section 33503, and the quorum requirement set forth in Section 33507 shall become void and, instead, the quorum shall be a majority of the voting members of the governing board.

33505. (a) The term of each voting member of the governing board shall be two years and until his or her successor is appointed. Any vacancy shall be filled within 60 days of its occurrence by the appointing authority.

(b) Notwithstanding subdivision (a), no supervisor, mayor, or member of a city council shall hold office on the governing board of the conservancy for more than 60 days after ceasing to be that supervisor, mayor, or member of the city council, respectively, and the membership on the board held by that person terminates upon the expiration of that 60-day period. However, any mayor who immediately resumes the office of member of the city council, and any member of a city council who becomes mayor, has not ceased to hold office for the purposes of this subdivision.

(c) The seat of any general public member shall be deemed vacant upon the member's ceasing to be a resident of the conservancy's territory, and the membership on the board held by that person shall terminate upon the appointment of his or her successor or the expiration of a period of 60 days after ceasing to be a resident, whichever occurs first.

33506. The voting members of the conservancy's governing board shall elect a chairperson, vice chairperson, and other officers

as deemed necessary, to serve for one-year terms. No ex officio member may be elected an officer of the governing board.

33507. Eight voting members of the governing board shall constitute a quorum, and no official action shall be taken by the governing board except in the presence of a quorum and upon the recorded votes of a majority of the voting members of the governing board. The existence of one or more vacancies among the voting members shall not change the requirements of this section.

33508. Each voting member of the governing board shall receive compensation in an amount set by the governing board, not to exceed seventy-five dollars ($75) for each day, or portion thereof, and not to exceed four hundred fifty dollars ($450) annually, while attending meetings of the governing board, or, upon authorization by the governing board, while on official business of the conservancy, and to receive the actual and necessary expenses incurred in performing those official duties. Any member may waive compensation.

33509. Meetings of the governing board are subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

CHAPTER 2. POWERS AND DUTIES

33600. The conservancy shall have and may exercise all rights and powers, expressed or implied, necessary to carry out the purposes and intent of this division, including, but not limited to, the rights and powers expressly set forth in this division.

33601. The conservancy may:

(a) Sue and be sued.

(b) Employ an executive director and other necessary staff.

(c) Enter into contracts pursuant to Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, for services requiring knowledge, experience, and ability not possessed by the conservancy's staff.

(d) Enter into joint powers agreements pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and other agreements with public agencies, private entities, and persons necessary for the proper discharge of the conservancy's duties.

33602. The conservancy may adopt ordinances governing the use by the public of conservancy lands and provide for their enforcement. Any ordinance shall authorize only those uses of conservancy lands that are consistent with the protection, enhancement, or restoration of those lands and the resource values specified in Section 33500. The violation of any ordinance is an infraction.

33603. The conservancy may provide interpretive services and facilities and make the minimal improvements necessary to negate the deleterious influence of man on, and to facilitate the public's

enjoyment of, and to enhance the public's recreational and educational experiences on, conservancy lands. No improvement shall be undertaken unless it is in furtherance of the conservancy's purposes, as set forth in Section 33501.

33604. Any expenditure by the conservancy that exceeds the amount specified in Section 20162 of the Public Contract Code, except expenditures for the acquisition of land for the purposes of Section 33501, shall be subject to the requirements of Article 4 (commencing with Section 20160) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.

33605. The conservancy may accept any revenue, money, grants, goods, or services from any public agency, private entity, or person for any lawful purpose of the conservancy.

CHAPTER 3. OPEN-SPACE PROTECTION PROGRAM

33700. (a) As used in this chapter, "mountainous lands" means all lands, irrespective of their angle of slope or other natural or manmade terrain features, within the territory of the conservancy that lie above the floor of the Coachella Valley, if there is no alluvial fan, or that lie above any alluvial fan extending onto the valley floor, as more specifically set forth in that certain map entitled "Coachella Valley Mountainous Lands Map" and dated May 31, 1989, and placed on file with the Secretary of State, which map is hereby incorporated in this subdivision by this reference. The map described in this subdivision may be combined with, and made a part of, the map described in Section 33502.

(b) The governing board of the conservancy may adjust the boundary delineating mountainous lands within the conservancy's territory, but not by more than 100 yards from the boundary mapped as specified in subdivision (a), to avoid bisecting any single lot or parcel in existence on the effective date of this section or to conform the boundary to more readily identifiable natural or manmade features in existence on the effective date of this section, so long as the adjustment will not jeopardize any of the resource values specified in Section 33500. Any adjustment in the boundary shall be reflected in a revision to the map specified in subdivision (a), which revision shall be promptly filed with the Secretary of State.

(c) In the event of any inconsistency between the definition of "mountainous lands," as set forth in this section, and the map described in this section, the definition shall control.

33701. (a) The conservancy may acquire any uninhabited real property within its territory containing mountainous lands by eminent domain after providing at least 60 days' notice to the city in which the real property is situated or to the county, if the real property is situated in an unincorporated area, of its intention to acquire the real property by eminent domain. The conservancy shall not, however, acquire any real property by eminent domain if either of the following is the case:

(1) No part of the real property is mountainous land.

(2) The acquisition is objected to by the city in which the real property is situated or by the county, if the real property is situated in an unincorporated area. To be effective, the objection shall be made by a resolution of the city council or the county board of supervisors, as the case may be, adopted within 60 days of the receipt of notice from the conservancy indicating its intention to acquire the real property by eminent domain. The city or the county, as the case may be, may at any subsequent time rescind its objection to an acquisition by eminent domain.

(b) If the conservancy acquires real property by eminent domain, and determines that it is not possible to avoid bisecting it by the procedure authorized by subdivision (b) of Section 33700, the conservancy shall cause it to be subdivided and shall offer to grant the portion that is not mountainous lands to the condemnee at a price not to exceed current market value on the condition that the condemnee waive all claims and actions against the conservancy for severance damages.

33702. (a) Except as provided in Section 33701, the conservancy may acquire any property, and any interest in property, within its territory by any means if acquisition of the property is in furtherance of the conservancy's purposes, as set forth in Section 33501, and the conservancy shall thereafter hold, manage, maintain, administer, occupy, and care for that property in perpetuity. The conservancy shall give primary priority to the acquisition of property, the development of which would have visual impact from the floor of the Coachella Valley, and secondary priority to property, the acquisition of which will preserve wildlife habitat.

(b) The conservancy shall not sell, exchange, lease, or otherwise dispose of any mountainous lands unless authorized by a four-fifths vote of the governing board or a two-thirds vote of the electors residing within the conservancy. Any lease entered into pursuant to this subdivision shall not exceed five years and shall include the express provision that the lease may be terminated at any time the governing board determines that the land is needed for conservancy purposes.

(c) Notwithstanding subdivision (a) and the requirements specified in subdivision (b), the conservancy may sell, exchange, or lease property that is not mountainous land on any terms that are in the best interests of the conservancy.

33703. This division is not intended to infringe on the existing authority of the County of Riverside or the cities lying within the conservancy's territory to plan and control land uses, and no provision of this division shall be construed as conferring on the conservancy the authority to plan or control the use of any land except those lands that the conservancy may acquire and hold.

33704. The Legislature hereby acknowledges the role of the former Coachella Valley Mountains Conservancy, a California nonprofit corporation, and its successor, the Coachella Valley

Mountains Trust, a California nonprofit corporation, in providing the leadership within the community that led to the creation of the conservancy pursuant to this division. Accordingly, the conservancy created by this division shall consult, and coordinate its program, with the trust, and any successor entity, for as long as it may exist.

CHAPTER 4. FINANCES

33800. The conservancy may borrow money and incur indebtedness pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840), and Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code and shall be deemed a local agency for the purposes of those articles.

33801. The conservancy may accept any revenue, money, grants, goods, or services from any public agency, private entity, or person for any lawful purpose of the conservancy.

33802. The conservancy may fix and collect fees for the use by the public of any lands owned or otherwise controlled by the conservancy. No fee shall, however, exceed the conservancy's cost of providing the service for which the fee is charged.

33803. (a) The conservancy may raise revenues for any lawful purpose of the conservancy pursuant to this chapter.

(b) If the conservancy proposes to raise revenue by the levy of an assessment on real property or by the levy of any type of tax or increase in any existing tax authorized by this chapter, the assessment or tax may not be levied unless and until it is approved by the electors of the conservancy at an election held for that purpose. Any assessment or tax levied by the conservancy shall be approved by two-thirds of the votes cast by the electors of the conservancy, unless the law authorizing the assessment or tax provides for approval by a majority of the votes cast by the electors of the conservancy.

(c) Any election conducted by the conservancy shall be consolidated with a statewide election or any election conducted throughout the County of Riverside.

33804. The conservancy is expressly authorized to raise revenues by any, or a combination, of the following:

(a) An assessment to finance capital improvements and land acquisition, which may be levied within one or more zones within the conservancy's territory established to reflect the level of service provided by the conservancy within the zone, as provided in the Improvement Act of 1911 (Division 7 (commencing with Section 5000), Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500), Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000), Streets and Highways Code), and the Landscaping and Lighting Act of 1972 (Division 15 (commencing with Section 22500), Streets and Highways Code). At

the election authorizing the assessment, the conservancy may propose a range of assessment rates, within which range the rate may from time to time be adjusted by the governing board to reflect the conservancy's revenue needs.

(b) A special tax, as provided in Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(c) A special tax levied pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code).

33805. Upon making the determination that immediate revenues are insufficient for the acquisition of property, other capital expenses, or the funding or refunding of any outstanding indebtedness, the governing board of the conservancy may call an election on a proposition to incur indebtedness in a specified amount and to issue limited obligation bonds.

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.

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 978

An act to add Article 4 (commencing with Section 52750) to Chapter 11 of Part 28 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

I am deleting the $145,000 appropriation contained in Section 2 of Assembly Bill No. 294.

This bill would establish the Physical Education Specialist Program to provide funding to elementary schools to maintain a physical education specialist program. School districts would receive one-time grants of $1,000 for each elementary school to purchase physical education equipment As a condition for receiving the grant, school

districts would need to employ at least one credentialed physical education specialist for every two elementary schools.

The Department of Finance estimates that the appropriation contained in this bill would only be sufficient to fund 130 elementary schools. A statewide program is estimated to cost $4.6 million. I believe that a program of such magnitude is more appropriate to be considered during the budget process for Fiscal Year 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 294.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Article 4 (commencing with Section 52750) is added to Chapter 11 of Part 28 of the Education Code, to read:

Article 4. Physical Education Specialist Pilot Program

52750. There is hereby established the Physical Education Specialist Program, to be administered by the State Department of Education, for the purpose of providing funding to school districts to maintain a physical education specialist program. The department shall establish criteria for the selection of the applicant school districts to participate in the program. School districts that are selected to participate shall be required, as a condition for the receipt of funding, to comply with all of the requirements prescribed by this article. Each school district participating in the program shall be eligible to receive a one-time grant in the amount of one thousand dollars ($1,000) for each elementary school served by a physical education specialist. Program funds shall be used for the purchase of equipment necessary for an elementary school physical education program. Each program participant shall be required to certify that funding shall only be used for elementary schools in the district that are served by physical education specialists.

52751. (a) The governing board of each school district maintaining an elementary school that elects to participate in the program shall employ persons holding certification qualifications as physical education specialists. Persons employed as physical education specialists shall be the holders of a single subject teaching credential authorizing instruction in physical education.

(b) Physical education specialists shall be responsible for the development of physical education instructional programs and activities and the provision of direct instructional services to pupils in furtherance of the district's physical education programs, including all of the following:

(1) The delivery of elementary school physical education programs meeting the minimum instructional time requirements prescribed by subdivision (g) of Section 51210.

(2) The delivery of elementary school physical education programs in accordance with model curriculum and program guidelines prescribed by the State Department of Education.

(3) The delivery of a comprehensive elementary school physical education program, including, but not limited to, physical fitness activities, games, sports, basic movement, and nutrition and health programs.

52752. The maximum ratio of physical education specialists to elementary schools participating in the program shall be one physical education specialist for every two elementary schools in the district.

52753. The State Department of Education shall prescribe criteria for the evaluation of the effectiveness of each school district participating in the program. The evaluation shall include the assessment of elementary school pupils in grades 3 to 6, inclusive, in participating elementary schools prior to and following the establishment of elementary school physical education programs under the program, based upon the results of the Physical Best Fitness Performance Test.

52754. The Commission on Teacher Credentialing shall review the multiple subject teaching credential requirements to assess the scope and content of course units in physical education that are required for the completion of a diversified or liberal arts program, as set forth in Section 44314. The commission shall submit a report to the Legislature on or before January 1, 1992, on this assessment, including recommendations for improving teacher preparation in providing instruction in physical education.

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 Education for the purpose of awarding grants to school districts participating in the program established pursuant to Article 4 (commencing with Section 52750) of Chapter 11 of Part 28 of the Education Code, for allocation in accordance with the following schedule:

(a) For the purpose of awarding one-time grants to participating school districts	$130,000
(b) For the purpose of conducting the evaluation of participating school districts pursuant to Section 52753 of the Education Code	$15,000

CHAPTER 979

An act to amend Section 44834 of, and to add Sections 44834.1 and 44834.2 to, the Education Code, relating to schools, and making an appropriation therefor.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

I am deleting the $100,000 appropriation from the Teacher Credentials Fund contained in Section 5 of Senate Bill No 306

This bill would eliminate an exemption that authorizes certain credentialed teachers to be employed in administrative positions without an administrative services credential.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No 306.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The Legislature hereby finds and declares that recent improvements in the curriculum and training prescribed for applicants for administrative and supervisory credentials in the public schools have increased expectations as to the minimum levels of performance required for persons holding these positions. The Legislature further finds and declares that due to the overall increase in the available pool of qualified holders of administrative and supervisory credentials, it is no longer necessary to authorize the governing boards of school districts to employ persons who do not hold these credentials in those positions pursuant to the requirements of Section 44834 of the Education Code.

SEC. 2. Section 44834 of the Education Code is amended to read:

44834. (a) Notwithstanding any other provision of law, on and after the effective date of this section the governing board of a school district may employ an individual in any administrative or supervisory position, irrespective of whether or not that person holds any supervisory or administrative credential if he or she meets all of the following criteria:

(1) He or she holds a valid teaching credential.

(2) He or she has completed 15 years service as a teacher, as defined in Section 41011, including 10 years of teaching service in the employ of the district which appoints him or her to an administrative or supervisory position.

(3) The last 10 years of service immediately preceding his or her appointment to an administrative or supervisory position were as a teacher of the natural sciences, the social sciences (other than education or educational methodology), the humanities, mathematics, and the fine arts.

(b) Commencing January 1, 1991, subdivision (a) shall apply only

to persons who were employed by the governing board of a school district in a supervisory or administrative position on or before January 1, 1991, pursuant to the requirements of this section as it read on December 31, 1990.

SEC. 3. Section 44834.1 is added to the Education Code, to read:

44834.1. On or before June 30, 1991, the Commission on Teacher Credentialing shall adopt criteria to exempt from the requirement of obtaining an administrative services credential those certificated employees who participate in innovative programs of school organization that may be developed by the certificated personnel, including, but not limited to, administrators and teachers of a school district. Any exemption granted by the commission under this section shall be valid only in the school district for which the exemption has been approved.

It is the intent of the Legislature that institutions of higher education be encouraged to actively participate in partnerships with the local governing boards of school districts, school district administrators, teachers, and other certificated personnel in the development and implementation of innovative programs of school organization.

SEC. 4. Section 44834.2 is added to the Education Code, to read:

44834.2. (a) It is the intent of the Legislature that the minimum requirements for the administrative services credential prescribed by Sections 44270 and 44270.1 include an integration of theoretical knowledge and the demonstration of skills. It is further the intent of the Legislature that the minimum requirements for the administrative services credential reflect an appropriate balance of coursework, supervised fieldwork, and related experiences designed to contribute to the development and improvement of the educational leadership skills necessary to perform the duties of a school administrator.

(b) The Commission on Teacher Credentialing, in consultation with institutions of higher education, the State Department of Education, school districts, including teachers and parents, credential candidates, professional organizations, and representatives of the business community, shall conduct a comprehensive study which shall include, but shall not be limited to, all of the following:

(1) The efficacy of the existing university-based administrative services credential structure and administrative preparation programs.

(2) Alternative models for assessing administrator competence.

(3) Issues related to competencies required for administrative positions.

(4) A study of the California School Leadership Academy Administrative Training Center instructional program and other nonuniversity-based training for administrators.

(c) The commission shall submit a report to the education policy committees of the Legislature on or before March 1, 1992, on the

findings of the study and on recommendations for further action. The findings shall address all of the following:

(1) The conditions under which nonuniversity-based training would fulfill part of the credential requirements.

(2) Alternative methods for assessing administrator competence.

(3) Emphasizing supervised fieldwork for administrative services credential preparation programs.

(d) Based on the findings of the study, the commission shall propose appropriate changes in the rules and regulations adopted pursuant to Sections 44270 and 44270.1 which respectively prescribe the requirements for the preliminary and professional administrative services credentials and shall initiate the revisions to the regulations by June 1992.

SEC. 5. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the purpose of conducting a comprehensive study of the administrative services credential and administrative preparation programs required by Section 44834.2 of the Education Code.

CHAPTER 980

An act to add Sections 56111.6 and 56111.7 to the Government Code, and to amend Section 5003 of the Penal Code, relating to correctional facilities, and making an appropriation therefor.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

I am deleting the appropriations contained in Sections 4, 7, 9 and 12 totaling $685.9 million contained in Senate Bill No. 2786.

This bill would authorize and appropriate funding for new prison facilities; establish minority hiring goals for CSP-Imperial, South, authorizes the Cities of Blythe and Susanville to annex prison territory, adds and renames prisons under the jurisdiction of the Department of Corrections and requires CDC to consider persons from Imperial County for the position of Community Resources Manager.

These appropriations are unnecessary. I have recently signed Senate Bill No. 549, which provides the necessary appropriations to fund the new prison facilities contained in this bill.

With these deletions, I approve Senate Bill No. 2786.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 56111.6 is added to the Government Code, to read:

56111.6. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Blythe may annex noncontiguous territory of not more than 1,800 acres in area, located in the County of Riverside and which constitutes a state correctional 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 Blythe.

(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 Blythe pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Blythe 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 56111.7 is added to the Government Code, to read:

56111.7. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Susanville may annex noncontiguous territory of not more than 1,400 acres in area, located in the County of Lassen and which constitutes a state correctional 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 Susanville.

(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 Susanville pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Susanville 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. 3. Section 5003 of the Penal Code is amended to read:

5003. The department has jurisdiction over the following prisons and institutions:

(a) The California State Prison at San Quentin.

(b) The California State Prison at Folsom.

(c) The California Institution for Men.

(d) The California Institution for Women.

(e) The Deuel Vocational Institution.

(f) The California Medical Facility.

(g) The Correctional Training Facility.

(h) The California Men's Colony.

(i) The California Correctional Institution at Tehachapi.

(j) The California Rehabilitation Center.

(k) The California Correctional Center at Susanville.

(*l*) The Sierra Correctional Center.

(m) The Richard J. Donovan Correctional Facility at Rock Mountain.

(n) Mule Creek State Prison.

(o) Northern California Women's Facility.

(p) Pelican Bay State Prison.

(q) Avenal State Prison.

(r) California State Prison—King's County at Corcoran.

(s) Chuckawalla Valley State Prison.

(t) Those other institutions and prison facilities as the Department of Corrections or the Director of Corrections may be authorized by law to establish, including, but not limited to, prisons in Madera, Kern, Imperial, and Los Angeles Counties.

SEC. 4. The sum of two hundred fourteen million four hundred thousand dollars ($214,400,000) is hereby appropriated from the 1990 Prison Construction Fund or the 1990-B Prison Construction Fund, or both, in amounts determined by the Director of Corrections, to the Department of Corrections for the construction of the California State Prison Imperial County, South, authorized by Section 3 of Chapter 1413 of the Statutes of 1989.

Funds appropriated shall be available for purposes of site studies and suitability reports, site acquisition, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

SEC. 5. The Department of Corrections shall establish, for the California State Prison-Imperial County, South, 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.

SEC. 6. The Department of Corrections is hereby authorized to construct and establish a 2,000-bed Level III prison together with a 400-bed support services facility on the existing grounds of Chuckawalla Valley State Prison.

SEC. 7. The sum of two hundred fourteen million two hundred thousand dollars ($214,200,000) is hereby appropriated from the 1990 Prison Construction Fund or the 1990-B Prison Construction Fund, or both, in amounts determined by the Director of Corrections to the Department of Corrections, for constructing the Level III prison on the existing grounds of the Chuckawalla Valley State Prison authorized by Section 6 of this act.

Funds appropriated shall be available for purposes of site studies and suitability reports, site acquisition, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

SEC. 8. For purposes of all prisons authorized by this act, Division 13 (commencing with Section 21000) of the Public Resources Code shall apply except for those provisions that require consideration of alternative sites and alternative uses for a site for the proposed projects authorized by Section 8101 of the Penal Code and this act.

SEC. 9. (a) 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 the vicinity of Coalinga in Fresno County.

(b) The sum of two hundred seven million three hundred thousand dollars ($207,300,000) is hereby appropriated from either the 1990 Prison Construction or the 1990-B Prison Construction Fund, or both, in amounts determined by the Director of Corrections, for the construction of the California State Prison-Fresno County, authorized by subdivision (a), and shall be obtained from funds authorized by a general obligation bond act, upon adoption by the voters.

SEC. 10. It is the intention of the Legislature in enabling the construction of the California State Prison-Fresno County pursuant to Section 10 of this act to ensure that the City of Coalinga and the Department of Corrections actively endeavor to encourage the development of affordable accommodations and transportation at locations and times to afford access to all visitors of prisoners, including the infirm, the aged, the poor, and children.

SEC. 11. Notwithstanding any other provision of the law, the Department of Corrections is hereby authorized to construct and establish 1,000 Level I beds as work-based camp facilities.

SEC. 12. The sum of fifty million dollars ($50,000,000) is hereby appropriated from the 1990 Prison Construction Fund to the Department of Corrections for constructing and establishing the Level I work-based camp facilities authorized by Section 11 of this act.

Funds appropriated shall be available for site acquisitions, site studies, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

SEC. 13. In appointing a person to the position of community resources manager for the California State Prison-Imperial County, South, and the position of community resources manager for the California state prisons authorized by Sections 6, 9, and 11 of this act, the Department of Corrections shall consider for those positions qualified persons from the county where the prison is located who have an understanding of local governmental policies and issues and who have a knowledge of the correctional system.

SEC. 14. The Legislature finds and declares that, for purposes of Sections 1 and 2 of this act, 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 Blythe and the City of Susanville.

CHAPTER 981

An act to add Sections 15819.23 and 15819.24 to, and to add Chapter 3.3 (commencing with Section 15819.40) to Part 10b of Division 3 of Title 2 of, the Government Code, to amend Section 5003 of the Penal Code, to repeal Section 2 of Chapter 1413 of the Statutes of 1989, and to amend Section 207.1 of the Welfare and Institutions Code, relating to correctional facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Notwithstanding any other provision of the law, the Department of Corrections is hereby authorized to construct and establish a 2,000-bed Level III prison together with a 400-bed support services facility on the existing grounds at Chuckawalla Valley State Prison.

SEC. 2. The Department of Corrections is hereby authorized to construct and establish a combination 100-bed reception center, and 1,900-bed Level II prison together with a 200-bed support services facility on the grounds of the California Correctional Center.

SEC. 3. The Department of Corrections is hereby authorized to construct and establish a women's facility of up to 2,000 beds on the grounds of the Central California Women's Facility in Madera County.

SEC. 4. 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 the vicinity of Coalinga in Fresno County.

SEC. 5. It is the intent of the Legislature to provide for the construction and financing of a joint-use correctional facility at the California State Prison at San Quentin. The Department of Corrections is hereby authorized to construct a joint-use facility on the existing grounds of the California State Prison at San Quentin. This facility shall consist of a reception center for state inmates of 2,650 beds (2,150 reception beds and a 500-bed support services facility), and a separately located minimum security facility of 300 beds that shall be leased to the County of Marin pursuant to this section and Chapter 3.3 (commencing with Section 15819.40) of Part 10b of Division 3 of Title 2 of the Government Code. The funding for this joint-use correctional facility shall be derived from lease-purchase financing pursuant to Chapter 3.3 (commencing with Section 15819.40) of Part 10b of Division 3 of Title 2 of the Government Code. For the lease of the 300-bed minimum security facility portion of the joint-use correctional facility, pursuant to Chapter 3.3 (commencing with Section 15819.40) of Part 10b of Division 3 of Title 2 of the Government Code, the County of Marin shall be required to make a deferred payment of 25 percent. The design of the minimum security facility portion of the joint-use correctional facility shall be approved by the Board of Corrections for compliance with minimum standards. Constuction of the joint-use correctional facility shall not proceed until an operating agreement, prepared in a mutually agreeable manner and amount, is executed by the Department of Corrections and the County of Marin.

SEC. 6. The Department of Corrections is hereby authorized to construct and establish 1,000 Level I beds as work-based camp facilities.

SEC. 7. The sum of six hundred thirty-seven million five hundred thousand dollars ($637,500,000) is hereby appropriated to the Department of Corrections as follows:

(a) For constructing and establishing the Level I work-based camp facilities authorized by Section 6 of this act, the sum of fifty million dollars ($50,000,000) is appropriated from the 1990 Prison Construction Fund.

(1) Funds appropriated shall be available for site acquisitions, site studies, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(2) Funds appropriated by this subdivision may also be used to establish four positions, two of which shall be limited to a two-year term, and provide support funding for the supervision of activities related to the design, construction, and renovation of 1,000 Level I beds authorized by Section 6 of this act.

(b) From the 1990 Prison Construction Fund, the sum of two hundred fourteen million two hundred thousand dollars

($214,200,000) for constructing the Level III prison on the existing grounds of the Chuckawalla Valley State Prison authorized by Section 1 of this act.

Funds appropriated shall be available for purposes of site studies and suitability reports, site acquisition, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(c) For constructing the combination reception center and Level II prison authorized by Section 2 of this act, the sum of one hundred ninety-five million four hundred thousand dollars ($195,400,000) is appropriated as follows:

(1) From the 1990 Prison Construction Fund, the sum of forty-five million dollars ($45,000,000).

(2) From the 1990-B Prison Construction Fund, the sum of one hundred fifty million four hundred thousand dollars ($150,400,000).

Funds appropriated shall be available for site studies and suitability reports, site acquisition, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(d) For constructing the women's facility of up to 2,000 beds authorized by Section 3 of this act, the sum of one hundred seventy-five million four hundred thousand dollars ($175,400,000) is appropriated as follows:

(1) From the 1990 Prison Construction Fund, the sum of forty-five million dollars ($45,000,000).

(2) From the 1990-B Prison Construction Fund, the sum of one hundred thirty million four hundred thousand dollars ($130,400,000).

Funds appropriated shall be available for site studies and suitability reports, site acquisition, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(e) From the 1990 Prison Construction Fund, the sum of two million five hundred thousand dollars ($2,500,000) for the purpose of replacement, as necessary, of modulars used for support service and housing at the Bautista Conservation Camp in Riverside County.

SEC. 8. Section 15819.23 is added to the Government Code, to read:

15819.23. (a) The necessary funding for the construction of the California State Prison-Imperial County, South authorized by Chapter 1413 of the Statutes of 1989 may be obtained through lease-purchase financing arrangements. The provisions of Section 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply for these purposes provided that the following also applies:

(1) "Prison facility" as used in Section 15819.1 includes the California State Prison-Imperial County, South.

(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, South.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison-Imperial County, South 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 two hundred fourteen million four hundred thousand dollars ($214,400,000) shall be available for capital outlay for the California State Prison-Imperial County, South from funds derived from lease-purchase financing methods. This amount shall be available as necessary for site acquisition, site 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. 9. Section 15819.24 is added to the Government Code, to read:

15819.24. (a) It is the intention of the Legislature in enabling the constuction of the California State Prison-Fresno County, as authorized by the act that enacted this section, to ensure that the City of Coalinga and the Department of Corrections actively endeavor to encourage the development of affordable accommodations and transportation at locations and times to afford access to all visitors of prisoners, including the infirm, the aged, the poor, and children.

(b) The necessary funding for the construction of the California State Prison-Fresno County, authorized by the act that enacted this section, may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15, shall apply for this purpose, provided that the following apply:

(1) "Prison facility," as used in Section 15819.1, includes the California State Prison-Fresno 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-Fresno County.

(c) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison-Fresno 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 two hundred seven million three hundred thousand dollars ($207,300,000) shall be available for capital outlay for the California State Prison-Fresno 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.

(d) 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. 10. Chapter 3.3 (commencing with Section 15819.40) is added to Part 10b of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.3. LEASE-PURCHASE FINANCING OF JOINT-USE CORRECTIONAL FACILITY CONSTRUCTION

15819.40. As used in this chapter, the following definitions shall control:

(a) "Bonds" means revenue bonds, notes, or bond anticipation notes issued to finance the joint-use correctional facility, interest during construction thereof, reserve funds, and costs of issuance of the bonds, as the Public Works Board may determine.

(b) "Lease pledge" means the pledge of the Public Works Board of moneys for payment under the facility leases.

(c) "Lease-purchase financing" means the financing of a joint-use correctional facility from the proceeds of the sale of bonds authorized by the Public Works Board.

(d) "Lessor" means the lessor under the facility leases and any trustee on behalf of the lessor.

(e) "Facility lease" means any lease of a joint-use correctional facility entered into by the Director of Corrections with the Public Works Board pursuant to this chapter.

(f) "Joint-use correctional facility" means a state prison reception center and a separately located 300-bed minimum security facility situated on the existing grounds of the California State Prison at San Quentin, including the real property, fixtures, furnishings, equipment, and related improvements for the joint use of the Department of Corrections and the County of Marin.

(g) "Operating agreement" means a mutually acceptable contract between the Department of Corrections and the County of Marin that provides for the lease of a 300-bed minimum security facility on the grounds of San Quentin to the county, deferred payment of the matching requirements, the provision of support services from the state prison to the county sentenced facility, and other matters necessary to the successful construction and operation of the joint-use correctional facility.

15819.41. Without obtaining further authorization under Section 15808, the Public Works Board may acquire, may obtain an option to purchase, and may engage in the construction of the joint-use correctional facility at San Quentin, but only at the request of, or with the consent of, the Department of Corrections.

15819.42. (a) The Public Works Board shall finance the joint-use correctional facility using lease-purchase financing arrangements by the issuance of bonds pursuant to Chapter 5 (commencing with Section 15830). The construction of the joint-use correctional facility or the financing of joint-use correctional facilities constitutes the construction of public buildings for the purposes of Chapter 5 (commencing with Section 15830).

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the joint-use correctional facility on the grounds of the California State Prison at San Quentin deposited in the State Treasury, are hereby continuously appropriated to the Public Works Board on behalf of the Department of Corrections for the purpose of construction or refinancing the joint-use correctional facility so financed.

The sum of two hundred seventy-one million dollars ($271,000,000) shall be available for capital outlay for the joint-use correctional facility on the grounds of the California State Prison at San Quentin from funds derived from lease-purchase financing methods. This amount shall be available as necessary for site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

This chapter shall not be implemented until the Department of Corrections in conjunction with the Department of Water Resources, and the Marin Municipal Water District, and the County of Marin have each explored the availability of reclaimed water and desalinated water and an agreement has been accepted by the Marin Municipal Water District, the Department of Corrections, and the County of Marin that an adequate water supply for the prison and the honor farm can be available in a manner acceptable to the three parties. Only the funds necessary for site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans and the study required by this section shall be available prior to the agreement required by this section.

(c) The Public Works Board may authorize the augmentation of the cost of the construction of the facility set forth in this section pursuant to the board's authority under Section 13332.11. In addition, the board may authorize any additional amounts necessary to pay the costs of financing, including the payment of interest during construction of the facility, 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 facility. This additional amount may include interest during 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 financing of the facility.

(d) The Treasurer is authorized to use or direct the use of the proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

15819.43. (a) Lease-purchase financing shall not be sold by the Treasurer unless, at the time any notes or bond anticipation notes constituting the lease-purchase financing are so sold, they are rated in the highest short-term rating category by a nationally recognized rating service, at the time of sale or, at the time any bonds, other than notes or bond anticipation notes, constituting the lease-purchase financing are so sold, they are rated by a nationally recognized rating service at no more than one full credit grade below the state general obligation bond rating at the time of the sale.

(b) Notwithstanding subdivision (a), at least 30 days, or at such lesser time as both the Chairperson and Vice Chairperson of the Joint Legislative Budget Committee or their designee may in each instance determine, before a sale not meeting the requirements of subdivision (a), the Treasurer shall notify the Chairperson and Vice Chairperson of the Joint Legislative Budget Committee of the advantage to the state of proceeding with the sale.

(c) Upon compliance with subdivision (b), the Treasurer is authorized to proceed with the sale.

15819.44. Bonds authorized to be issued pursuant to this chapter shall be sold pursuant to Section 15832.

15819.45. (a) Notwithstanding Section 15816, the public buildings financed by the Public Works Board pursuant to this chapter shall be and remain under the jurisdiction and control of, and shall be operated and maintained by the Department of Corrections, except as provided in this section. Construction of the joint-use correctional facility utilizing the financing methods authorized in this chapter shall be done on behalf of the Public Works Board by the Department of Corrections. The Department of Corrections may contract with a construction manager and others for construction and other services related to the construction of the joint-use correctional facility financed pursuant to this chapter.

(b) Notwithstanding any other provision of law, the Board of Supervisors of the County of Marin may execute and deliver the operating agreement, leases, and those other documents as it may deem necessary or desirable, upon those terms and conditions as shall be approved by the Board of Supervisors of the County of Marin, for the purposes of carrying out this chapter.

(c) Notwithstanding any other provision of law, the Department of Corrections, subject to the approval of the State Public Works Board, shall, prior to the construction of the joint-use correctional facility, enter into a mutually acceptable operating agreement with the County of Marin that includes, but is not limited to, the following terms and conditions:

(1) County of Marin shall pay to the Department of Corrections an amount equal to 25 percent of the amount necessary to construct the 300-bed minimum security facility, including a proportionate share of the amount issued pursuant to subdivision (c) of Section 15819.42. Payments shall be made in equal installments over the term of the lease-purchase financing for the entire joint use correctional facility at an interest rate equal to that incurred for the total lease-purchase financing.

(2) County of Marin may use a sufficient and specific portion of the San Quentin Prison grounds, together with improvements, for the 300-bed minimum security facility for the exclusive purpose of housing inmates for a term not to exceed 99 years. The County of Marin shall pay as rental the sum of one dollar ($1) per year beginning the first month after the last payment installment is made pursuant to paragraph (1).

(3) County of Marin shall have the right to make modifications to the 300-bed minimum security facility or to replace buildings, subject to the approval of the Public Works Board and the Department of Corrections in accordance with the lease agreement.

(4) County of Marin shall have the option of obtaining food, laundry, infirmary, water, sewage, garbage, electricity, gas, building maintenance, janitorial, program space, and job training for county

inmates from San Quentin at the prison's direct costs for these services and supplies.

(5) County of Marin shall be responsible for all costs associated with operating and maintaining the 300-bed minimum security facility, including the cost of insurance for the 300-bed minimum security facility required by subdivision (a) of Section 15819.49.

15819.46. Amounts necessary to pay rent for the public buildings financed pursuant to this chapter and under and pursuant to the facility leases are hereby appropriated without regard to fiscal year from the General Fund, but shall become available for expenditure only if the Department of Finance certifies to the Controller that the amount required to pay this rent has not been included in the Budget Act for that fiscal year for the support of the Department of Corrections.

15819.47. The revenues, rentals, and receipts from all public buildings authorized to be financed under this chapter may be pledged for the payment of principal of, premium, if any, and interest on, the bonds issued to finance the acquisition and construction of all these public buildings. The bonds issued to finance these public buildings may be equally secured by a lien upon the revenues, rentals, and receipts without priority for number or the date of the bonds, their sale, execution, or delivery pursuant to this part.

15819.48. The Public Works Board, as additional security for the facility leases, may agree to pledge and assign all or any portion of any moneys as may be legally available from time to time, to secure payments for the facility lease to a fiscal agent, the Treasurer, or to a trustee in trust for the persons entitled thereto.

15819.49. In addition to any other powers granted by law, the Public Works Board may, for the purposes of this chapter, do any or all of the following:

(a) Obtain insurance against loss by fire or other hazards on public buildings, both during and after construction, and obtain insurance against loss of revenues from any causes whatsoever, for the protection of the holders of bonds.

(b) Issue notes and bond anticipation notes as provided in this part to obtain interim funds to pay the cost of public buildings, secure the payment of notes and bond anticipation notes and interest thereon as provided in this part, and provide for the security of notes and bond anticipation notes and the rights of the holders thereof.

The board may authorize the preparation of bid proposals for the construction of this project prior to obtaining interim financing. However, no contracts to be funded with proceeds from the sale of bonds shall be executed until interim financing is available to the board.

15819.50. The facility leases may be for any term not to exceed 35 years and may contain other terms, covenants, and conditions as the Public Works Board may approve.

15819.51. An amount not to exceed the amount of unsold bonds

which the Public Works Board has by resolution authorized to be sold for the purposes of carrying out this chapter is hereby appropriated from the General Fund to the Director of Finance, who may direct that any portion of that amount shall be deposited into a special account in the Public Building Construction Fund, to be used for the construction of the joint-use correctional facilities to be financed pursuant to this chapter. Any amounts made available from the General Fund under this section to the Public Works Board shall be repaid by the board to the General Fund from the proceeds received from the sale of bonds sold for the purpose of carrying out this chapter. These amounts shall be repaid to the General Fund with interest at the rate which the Treasurer certifies would have been earned on those amounts if invested in the Surplus Money Investment Fund.

SEC. 11. Section 5003 of the Penal Code is amended to read:

5003. The department has jurisdiction over the following prisons and institutions:

(a) The California State Prison at San Quentin.

(b) The California State Prison at Folsom.

(c) The California Institution for Men.

(d) The California Institution for Women.

(e) The Deuel Vocational Institution.

(f) The California Medical Facility.

(g) The Correctional Training Facility.

(h) The California Men's Colony.

(i) The California Correctional Institution at Tehachapi.

(j) The California Rehabilitation Center.

(k) The California Correctional Center at Susanville.

(*l*) The Sierra Correctional Center.

(m) The Richard J. Donovan Correctional Facility at Rock Mountain.

(n) Mule Creek State Prison.

(o) Northern California Women's Facility.

(p) Pelican Bay State Prison.

(q) Avenal State Prison.

(r) California State Prison—King's County at Corcoran.

(s) Chuckawalla Valley State Prison.

(t) Those other institutions and prison facilities as the Department of Corrections or the Director of Corrections may be authorized by law to establish, including, but not limited to, prisons in Madera, Kern, Imperial, and Los Angeles Counties.

SEC. 12. Section 2 of Chapter 1413 of the Statutes of 1989 is repealed.

SEC. 13. (a) All of the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code, except those which require consideration of alternative sites and alternative uses for a site for the proposed project, shall apply to the projects authorized by Sections 1, 2, and 3 of this act.

(b) All of the provisions of Division 13 (commencing with Section

21000) of the Public Resources Code, except those requiring consideration of alternative sites and alternative uses for a site for a proposed project, shall apply to the project or projects authorized in or by Marin County pursuant to this act.

SEC. 14. (a) No proceeds from the sale of revenue bonds shall be expended pursuant to any section of this act until the funds appropriated from the Emergency Correctional Facility Bond Fund by subdivision (a) of Section 37 of the Comprehensive Crime Reduction and Drug Control Act of 1990 have been appropriated. Upon the appropriation of funds from the Emergency Correctional Facility Bond Fund, the amount of funds appropriated from revenue bonds authorized this act shall be reduced by three hundred six million dollars ($306,000,000).

(b) Notwithstanding Section 35 of the Comprehensive Crime Reduction and Drug Control Act of 1990, the Department of Corrections shall use the funds appropriated from the Emergency Correctional Facility Bond Fund by subdivision (a) of Section 37 of the Comprehensive Crime Reduction and Drug Control Act of 1990 for correctional facilities authorized by this act.

(c) (1) This section shall only become operative if Proposition 129 of the November 6, 1990, general election is adopted by the voters.

(2) This section shall not apply if the expenditure of funds from the Emergency Correctional Facility Bond Fund is subsequently delayed as a result of litigation, challenging the constitutionality of this section.

SEC. 15. 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 Department of 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 Department of 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 Department of 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 Department of 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 Department of 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 Department of the Youth Authority. The technical assistance shall take such form as the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of 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 July 1, 1991, 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 Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of 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 Department of 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 Department of the Youth Authority. The extensions may only be granted by the Department of 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 Department of 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 Department of 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 Department of the Youth Authority to an offshore law enforcement facility The extension may only be granted by the Department of 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 Department of 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 Department of 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 Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking 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 Department of 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 lockups. Based upon the information provided by the county, the Department of 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 Department of 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 Department of 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. 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:

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, is is necessary for this act to take effect immediately.

CHAPTER 982

An act to amend Section 42001.7 of the Vehicle Code, relating to littering.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 42001.7 of the Vehicle Code is amended to read:

42001.7. (a) Every person convicted of a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, shall be punished by a mandatory fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than one thousand dollars ($1,000) upon a third or subsequent conviction.

In no case may the court order imprisonment in the county jail for a violation punishable under this subdivision, unless imprisonment is ordered pursuant to Section 166 of the Penal Code.

(b) The court shall, in addition to the fines imposed pursuant to subdivision (a), order the offender to pick up litter or clean up graffiti at a time and place within the jurisdiction of the court as follows:

(1) For a first conviction punished pursuant to subdivision (a), the court shall require the offender to pick up litter or clean up graffiti for not less than eight hours.

(2) For a second conviction punished pursuant to subdivision (a), the court shall require the offender to pick up litter or clean up graffiti for not less than 16 hours.

(3) For a third or subsequent conviction punished pursuant to subdivision (a), the court shall require the offender to pick up litter or clean up graffiti for not less than 24 hours.

(c) It is the intent of the Legislature that persons convicted of highway littering be required to bear the penalty for their actions. Therefore, the court may not suspend the mandatory fines required by subdivision (a) except in unusual cases where the interest of justice would best be served by suspension of the fine. If the court suspends imposition of any fine required by subdivision (a), it shall, as a condition of that suspension, require the offender to pick up litter or clean up graffiti at a time and place within the jurisdiction of the court for not less than eight hours for every one hundred dollars ($100) of fine suspended. The court may not suspend the order to pick up litter or clean up graffiti required by this subdivision or subdivision (b) except in unusual cases where the interest of justice would best be served by suspension of that order.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. 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 983

An act to amend Sections 40060, 40062, and 130052 of, to add Sections 130052.1, 130052.2, and 130052.3 to, and to repeal Section 40060.5 of, the Public Utilities Code, relating to transportation.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 40060 of the Public Utilities Code is amended to read:

40060. The members of the Orange County Transportation Authority, comprised as specified by Section 130052, shall serve as the board of directors of the district.

SEC. 2. Section 40060.5 of the Public Utilities Code is repealed.

SEC. 3. Section 40062 of the Public Utilities Code is amended to read:

40062. The board shall determine the number of, and appoint the

officers of the district. Any officer of the Orange County Transportation Authority may also serve as an officer of the district.

SEC. 4. Section 130052 of the Public Utilities Code is amended to read:

130052. The Orange County Transportation Commission shall be known as the Orange County Transportation Authority and its governing body shall consist of 12 members appointed as follows:

(a) Four members of the Orange County Board of Supervisors appointed by that board. Terms of office of the four members of the board of supervisors shall be determined by the board of supervisors. A board of supervisors member's term shall cease if he or she no longer serves as a member of the board of supervisors.

(b) Six members appointed by the Orange County City Selection Committee. Each member appointed by the city selection committee shall be a mayor or a city council member serving within the county. In the selection of city members, consideration shall be given to the achievement of geographical and population balance among the members selected. Five of the city members shall be selected so that each of the five shall reside in a different supervisorial district. Terms of office of the six city members shall be determined by the city selection committee. A city member's term shall cease if he or she no longer serves as a member of a city council or as the mayor of a city.

(c) One member appointed by a majority vote of the other 10 voting members of the authority, which member shall be a resident of Orange County who is not then serving, and has not within the last four years served, as an elected official of a city within the county or as an elected official of the county. The member shall serve for a term of four years.

(d) The Director of Transportation District 12, who shall be appointed by the Governor as a nonvoting member. The member shall serve for a term of four years.

SEC. 5. Section 130052.1 is added to the Public Utilities Code, to read:

130052.1. The members of the Orange County Transportation Authority, comprised as specified by Section 130052, shall serve as the governing body of the Orange County Service Authority for Freeway Emergencies.

SEC. 6. Section 130052.2 is added to the Public Utilities Code, to read:

130052.2. Until July 1, 1996, any included municipal operator within the jurisdiction of the Orange County Transportation Authority shall annually be allocated a level of funding pursuant to the Mills-Alquist-Deddeh Act (Chapter 4 (commencing with Section 99200) of Part 11 of Division 10) which is not less than the amount allocated to that operator during the 1989–90 fiscal year adjusted by an amount equal to the previous year's allocation multiplied by the Los Angeles-Anaheim-Riverside Consumer Price Index, if the apportionment under Section 99231 is not exceeded, and the

operator complies with the expenditure limit prescribed by Section 99268.

SEC. 7. Section 130052.3 is added to the Public Utilities Code, to read:

130052.3. (a) The Orange County Transportation Commission, the Orange County Transit District, the Orange County Service Authority for Freeway Emergencies, and the Orange County Consolidated Transportation Services Agency shall jointly develop a comprehensive plan for consolidation of the functions of these agencies. The plan shall include, but not be limited to, all of the following:

(1) An institutional structure that provides for the consolidation of all functions of the agencies within a unified management structure responsible to a single policy board.

(2) A staffing plan that defines the personnel needs of the consolidated agencies.

(3) A financial plan that includes an estimate of the revenues available to the consolidated agencies, related restrictions or requirements, and an estimate of the expenditures under the consolidation plan.

(4) Recommendations for legislation necessary to implement the plan.

(b) The plan shall be approved by the Orange County Transportation Commission and the Board of Directors of the Orange County Transit District and shall be transmitted to the Legislature, the Governor, and the Controller on or before December 1, 1991.

(c) If the plan is not submitted by December 1, 1991, the Controller shall, during the 1992–93 fiscal year, withhold payments pursuant to Sections 2104, 2105, 2106, and 2107 of the Streets and Highways Code to every city in Orange County, and the County of Orange.

(d) Nothing in this section prohibits the Orange County Transportation Commission, the Orange County Transit District, the Orange County Service Authority for Freeway Emergencies, or the Orange County Consolidated Transportation Services Agency, pursuant to any authority which each respective agency possessed on January 1, 1991, from implementing all or part of the plan prior to its receipt by the Legislature.

SEC. 8. Sections 1 to 6, inclusive, of this act shall not become operative until the plan required by Section 130052.3 of the Public Utilities Code has been transmitted to the Legislature, the Governor, and the Controller, or until December 1, 1991, whichever is earlier.

SEC. 9. 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 984

An act to amend Section 71040.8 of, to add Section 69993.1 to, and to repeal and add Section 70047.1 of, the Government Code, relating to courts.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 69993.1 is added to the Government Code, to read:

69993.1. This section applies to the superior courts, or the municipal courts, or both, in San Joaquin County, as specified by the board of supervisors.

(a) A reporter's filing fee, as established by the board of supervisors, shall be collected pursuant to Section 68090.5. Notwithstanding Section 68090.5, the fee first established shall be in addition to the total filing fee established pursuant to Section 68090, but any increase in the reporter's filing fee shall be included within the total filing fee pursuant to Section 68090.5.

(b) In addition to any fee otherwise required, a fee per day equal to the fee established by the board of supervisors shall be charged to the parties for the services of an official reporter.

SEC. 2. 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 Sanhedrin Municipal Court District." The municipal court district shall have two judges. The judge of the municipal court may select either the sheriff or the marshal and their deputies to provide court-related services to the municipal court.

SEC. 3. Section 70047.1 of the Government Code is repealed.

SEC. 4. Section 70047.1 is added to the Government Code, to read:

70047.1. Notwithstanding any other provision of law, the following provisions shall be applicable to the Stanislaus County Superior Court:

(a) In Stanislaus County, to assist the superior court in the transaction of its judicial business, a majority of the judges of the superior court, with the approval of the board of supervisors, may appoint as many regular official reporters as necessary to report the proceedings in the court.

(b) The regular official superior court reporters, unless the right

to their services are waived, shall report all of the proceedings as otherwise provided by law or ordered by a superior court judge.

(c) The regular official court reporters shall be compensated at a range approved by the board of supervisors by ordinance or resolution.

In order that the salaries provided for in this section remain equitable and competitive, in the event an ordinance or resolution is adopted which provides a cost-of-living increase for employees of Stanislaus County, this salary range shall be deemed adjusted, increased, and amended by that ordinance or resolution.

(d) A regular official court reporter shall receive the same vacation, sick leave, retirement, and other benefits as are provided for county employees.

(e) For the purposes of retirement, the compensation of each reporter shall be deemed to be the total of all per diem and transcription fees paid by the county to all of the regular reporters of the superior court for all reporting services, divided by the number of superior court official reporters, plus his or her salary.

(f) The superior court executive officer shall appoint a supervising reporter to be compensated at an hourly rate that is 10 percent higher than Step 5 of the hourly rate specified in subdivision (c).

(g) 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. A court reporter shall also be allowed his or her traveling expenses as determined by the travel policy of Stanislaus County when reporting outside of the county seat.

(h) The judges of the superior court may appoint as many official superior court reporters pro tempore as the business of the court requires. They shall be unsalaried, but shall receive a per diem of $\frac{1}{260}$ of Step 4 of the hourly rate set pursuant to subdivision (c).

(i) In addition to any fee otherwise required, in civil cases that last longer than one judicial day, a fee equal to the per diem rate for official reporters pro tempore shall be charged per day of service, or portion thereof, to the parties, on a pro rata basis, for the services of an official regular or pro tempore reporter for the second and each succeeding day a reporter is required.

In addition to any fee otherwise required, in civil cases in which the court orders a daily transcript necessitating the services of two official reporters, the party requesting the daily transcript shall pay a fee equal to the per diem rate for official reporters pro tempore for each day of service rendered by the second reporter for the first and each successive day of trial or portion thereof.

All parties shall deposit their pro rata share of such fees with the clerk at the beginning of the court session on the day the fee is applicable.

The fees shall be taxed as costs in favor of any party paying the same and to whom costs are awarded by the judgment of the court.

Such a fee is not subject to Section 6103.

The clerk shall, on or before the first day of each calendar month, transmit to the county treasurer all money paid pursuant to this subdivision during the preceding calendar month. The money shall be deposited in the general fund of the county.

(j) The county shall provide the official reporters with supplies for the performance of their courtroom duties, excluding hardware.

(k) The presiding judge of the superior court may, upon request of the presiding judge of the municipal court, assign an official superior court reporter to the municipal court during such times as the business of the municipal court requires. Official superior court reporters who are so assigned shall receive no additional compensation for that service.

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 985

An act to add Section 89725.1 to the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 89725.1 is added to the Education Code, to read:

89725.1. Moneys received from the sale of interests in real property of the California State University in Contra Costa County shall be deposited and maintained in the State Treasury to the credit of the California State University Special Projects Fund and shall be available to the trustees for the purchase and development of real property for a California State University off campus center in Contra Costa County.

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

In order to facilitate the sale of property owned by the California State University in Contra Costa County, and to expedite the deposit

of the proceeds of that sale of property into the California State University Special Projects Fund, it is necessary that this act take effect immediately.

CHAPTER 986

An act to amend Sections 2510 and 2511 of, to add Chapter 3.5 (commencing with Section 2475) to Title 9 of Part 4 of Division 3 of, to add Section 2514 to, and to repeal and add Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of, the Civil Code, relating to powers of attorney.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 2. Chapter 3 (commencing with Section 2450) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3. STATUTORY SHORT FORM POWER OF ATTORNEY

2450. A statutory short form power of attorney executed before, on, or after the repeal of Chapter 3 (commencing with Section 2450) by the act that enacted this section, using a form that complied with Section 2450 as originally enacted by Chapter 602 of the Statutes of 1984, or as amended by Chapter 403 of the Statutes of 1985, is as valid as if Chapter 3 (commencing with Section 2450) had not been repealed by, and Section 2511 amended by, the act that enacted this section.

SEC. 3. Chapter 3.5 (commencing with Section 2475) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3.5. UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Article 1. General Provisions

2475. The following statutory form of power of attorney is legally sufficient when the requirements of Section 2476 are satisfied:

UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Civil Code §2475)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA CIVIL CODE SECTIONS 2475–2499.5, INCLUSIVE). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I_____
(your name and address)

appoint_____
(name and address of the person appointed, or of each person appointed if you want to designate more than one)

as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

_____ (A) Real property transactions.

_____ (B) Tangible personal property transactions.

_____ (C) Stock and bond transactions.

_____ (D) Commodity and option transactions.

_____ (E) Banking and other financial institution transactions.

_____ (F) Business operating transactions.

_____ (G) Insurance and annuity transactions.

_____ (H) Estate, trust, and other beneficiary transactions.

_____ (I) Claims and litigation.

_____ (J) Personal and family maintenance.

INITIAL

_____ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.

_____ (L) Retirement plan transactions.

_____ (M) Tax matters.

_____ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act _____

_____ .

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY", THEN ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this_____ day of_____, 19____

_____
(your signature)

_____
(your social security number)

State of_____

County of_____

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

State of California }
} ss.
County of_____ }

On this_____ day of_____,19____ before me,_____

_____, personally appeared
(name of notary public)

_____, personally
(name of principal)

known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

NOTARY SEAL

_____
(signature of notary public)

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

2476. A statutory form power of attorney under this chapter is legally sufficient if all of the following requirements are satisfied:

(a) The wording of the form complies substantially with Section 2475. A form does not fail to comply substantially with Section 2475 merely because the form does not include the provisions of Section 2475 relating to designation of coagents. A form does not fail to comply substantially with Section 2475 merely because the form uses the sentence "Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation" in place of the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation," in which case the form shall be interpreted as if it contained the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation."

(b) The form is properly completed.

(c) The signature of the principal is acknowledged.

2477. If the line in front of (N) of the statutory form under Section 2475 is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

2478. A power of attorney legally sufficient under this chapter is durable to the extent that the power of attorney contains language, such as "This power of attorney will continue to be effective even though I become incapacitated," showing the intent of the principal that the power granted may be exercised notwithstanding later incapacity.

2479. (a) A power of attorney under this chapter that limits the power to take effect upon the occurrence of a specified event or contingency, including, but not limited to, the incapacity of the principal, may contain a provision designating one or more persons who, by a written declaration under penalty of perjury, have the power to determine conclusively that the specified event or contingency has occurred.

(b) A power of attorney that contains the provision described in subdivision (a) becomes effective when the person or persons designated in the power of attorney execute a written declaration under penalty of perjury that the specified event or contingency has occurred, and any person may act in reliance on the written declaration without liability to the principal or to any other person, regardless whether the specified event or contingency has actually occurred.

(c) The provision described in subdivision (a) may be included in the "Special Instructions" portion of the form set out in Section 2475.

(d) Subdivisions (a) and (b) do not provide the exclusive method by which a power of attorney under this chapter may be limited to take effect upon the occurrence of a specified event or contingency.

2480. The following provisions apply to a statutory form power of attorney under this chapter:

(a) Article 3 (commencing with Section 2400) of Chapter 2.

(b) Article 4 (commencing with Section 2410) of Chapter 2.

(c) Sections 2512 and 2513.

2481. Nothing in this chapter affects or limits the use of any other form for a power of attorney. Any form that complies with the requirements of any law other than the provisions of this chapter may be used in lieu of the form set forth in Section 2475, and none of the provisions of this chapter apply if such other form is used.

2482. This chapter may be cited as the Uniform Statutory Form Power of Attorney Act.

2483. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

2484. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does 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.

Article 2. Construction of Powers

2485. By executing a statutory form power of attorney with respect to a subject listed in Section 2475, the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject, to do all of the following:

(a) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received for the purposes intended.

(b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal.

(c) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim.

(e) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney.

(f) Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.

(g) Keep appropriate records of each transaction, including an accounting of receipts and disbursements.

(h) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation.

(i) Reimburse the agent for expenditures properly made by the

agent in exercising the powers granted by the power of attorney.

(j) In general, do any other lawful act with respect to the subject.

2486. In a statutory form power of attorney, the language granting power with respect to real property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property.

(b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property.

(c) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted.

(d) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including all of the following:

(1) Insuring against a casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them.

(4) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property.

(e) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(f) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including all of the following:

(1) Selling or otherwise disposing of them.

(2) Exercising or selling an option, conversion, or similar right with respect to them.

(3) Voting them in person or by proxy.

(g) Change the form of title of an interest in or right incident to real property.

(h) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest or right.

2487. In a statutory form power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy,

receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property.

(b) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property.

(c) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(d) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(1) Insuring against casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(4) Moving from place to place.

(5) Storing for hire or on a gratuitous bailment.

(6) Using, altering, and making repairs or alterations.

2488. In a statutory form power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to do all of the following:

(a) Buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts and call and put options on stocks and stock indexes.

(b) Receive certificates and other evidence of ownership with respect to securities.

(c) Exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

2489. In a statutory form power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to do all of the following:

(a) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange.

(b) Establish, continue, modify, and terminate option accounts with a broker.

2490. In a statutory form power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to do all of the following:

(a) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.

(b) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan

association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution selected by the agent.

(c) Hire or close a safe deposit box or space in a vault.

(d) Contract to procure other services available from a financial institution as the agent considers desirable.

(e) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution.

(f) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(g) Enter a safe deposit box or vault and withdraw or add to the contents.

(h) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(i) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.

(j) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

(k) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit.

(*l*) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

2491. In a statutory form power of attorney, the language granting power with respect to business operating transactions empowers the agent to do all of the following:

(a) Operate, buy, sell, enlarge, reduce, and terminate a business interest.

(b) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement:

(1) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner.

(2) Enforce the terms of a partnership agreement by litigation or otherwise.

(3) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership.

(c) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of

similar character, and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument.

(d) With respect to a business owned solely by the principal:

(1) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney.

(2) Determine the policy of the business as to (A) the location of its operation, (B) the nature and extent of its business, (C) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation, (D) the amount and types of insurance carried, and (E) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees.

(3) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business.

(4) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business.

(e) Put additional capital into a business in which the principal has an interest.

(f) Join in a plan of reorganization, consolidation, or merger of the business.

(g) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable.

(h) Represent the principal in establishing the value of a business under a buy-out agreement to which the principal is a party.

(i) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments.

(j) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

2492. In a statutory form power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to do all of the following:

(a) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(b) Procure new, different, and additional contracts of insurance

and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(c) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(d) Designate the beneficiary of the contract, but the agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney.

(e) Apply for and receive a loan on the security of the contract of insurance or annuity.

(f) Surrender and receive the cash surrender value.

(g) Exercise an election.

(h) Change the manner of paying premiums.

(i) Change or convert the type of insurance contract or annuity as to any insurance contract or annuity with respect to which the principal has or claims to have a power described in this section.

(j) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by subdivision (d).

(k) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal.

(*l*) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity.

(m) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

2493. In a statutory form power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including the power to do all of the following:

(a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund.

(b) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund.

(c) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(d) Initiate, participate in, and oppose litigation to remove,

substitute, or surcharge a fiduciary.

(e) Conserve, invest, disburse, and use anything received for an authorized purpose.

(f) Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

2494. In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

(a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae.

(c) In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(g) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other

thing of value paid in settlement of or as proceeds of a claim or litigation.

2495. In a statutory form power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to do all of the following:

(a) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals.

(b) Provide for the individuals described in subdivision (a) all of the following:

(1) Normal domestic help.

(2) Usual vacations and travel expenses.

(3) Funds for shelter, clothing, food, appropriate education, and other current living costs.

(c) Pay for the individuals described in subdivision (a) necessary medical, dental, and surgical care, hospitalization, and custodial care.

(d) Continue any provision made by the principal, for the individuals described in subdivision (a), for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them.

(e) Maintain or open charge accounts for the convenience of the individuals described in subdivision (a) and open new accounts the agent considers desirable to accomplish a lawful purpose.

(f) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization and continue contributions to those organizations.

2496. In a statutory form power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs, or civil or military service, empowers the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision (a) of Section 2495, and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive.

(e) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

2497. In a statutory form power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to do all of the following:

(a) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals.

(b) Designate beneficiaries under those plans and change existing designations.

(c) Make voluntary contributions to those plans.

(d) Exercise the investment powers available under any self-directed retirement plan.

(e) Make rollovers of plan benefits into other retirement plans.

(f) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan.

(g) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

2498. In a statutory form power of attorney, the language granting power with respect to tax matters empowers the agent to do all of the following:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and to the tax year in which the power of attorney was executed and any subsequent tax year.

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(c) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(d) Act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

2499. The powers described in this article are exercisable equally with respect to an interest the principal has when the statutory form power of attorney is executed or acquires later, whether or not the property is located in this state, and whether or not the powers are exercised or the power of attorney is executed in this state.

2499.5. A statutory form power of attorney under this chapter

does not empower the agent to modify or revoke a trust created by the principal unless that power is expressly granted by the power of attorney. If a statutory form power of attorney under this chapter empowers the agent to modify or revoke a trust created by the principal, the trust may only be modified or revoked by the agent as provided in the trust instrument.

SEC. 4. Section 2510 of the Civil Code is amended to read:

2510. (a) This section does not apply to any of the following:

(1) A durable power of attorney for health care.

(2) A statutory short form power of attorney that satisfies the requirements of Section 2450.

(3) A statutory form power of attorney that satisfies the requirements of the Uniform Statutory Form Power of Attorney Act contained in Chapter 3.5 (commencing with Section 2475).

(b) A printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

This document may provide the person you designate as your attorney in fact with broad powers to manage, dispose, sell, and convey your real and personal property and to borrow money using your property as security for the loan.

These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.

You have the right to revoke or terminate this power of attorney.

If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

(c) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.

SEC. 5. Section 2511 of the Civil Code is amended to read:

2511. For the purposes of the declaration of witnesses required by Section 2500, "convincing evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the power of attorney as principal is not the individual he or she claims to be and any one of the following:

(a) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(b) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

(1) A passport issued by a foreign government.

(2) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(3) An identification card issued by a state other than California.

(4) An identification card issued by any branch of the armed forces of the United States.

SEC. 5.5. Section 2511 of the Civil Code is amended to read:

2511. For the purposes of the declaration of witnesses required by Section 2432 or 2500, "convincing evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the power of attorney as principal is not the individual he or she claims to be and any one of the following:

(a) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(b) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

(1) A passport issued by a foreign government.

(2) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(3) An identification card issued by a state other than California.

(4) An identification card issued by any branch of the armed forces of the United States.

(c) If the principal is a patient in a skilled nursing facility, a witness who is a patient advocate or ombudsman may, for the purposes of Section 2432 or 2500, rely upon the representations of the

administrators or staff of the skilled nursing facility, or of family members, as convincing evidence of the identity of the principal if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the principal.

SEC. 6. Section 2514 is added to the Civil Code, to read:

2514. (a) As used in this section the following terms have the following meanings:

(1) "Attorney in fact," "power of attorney," and "principal" have the meanings given these terms in Section 2410.

(2) "Springing power of attorney" means a power of attorney stating that it becomes effective at a specified future time or on the occurrence of a specified event or contingency, including, but not limited to, the subsequent incapacity of the principal. A springing power of attorney may be a durable power of attorney or a nondurable power of attorney.

(b) In a springing power of attorney, the principal may designate one or more persons who, by a written declaration under penalty of perjury, have the power to determine conclusively that the specified event or contingency has occurred. The principal may designate the attorney in fact or another person to perform this function, either alone or jointly with other persons.

(c) A springing power of attorney containing the designation described in subdivision (b) becomes effective when the person or persons designated in the power of attorney execute a written declaration under penalty of perjury that the specified event or contingency has occurred, and any person may act in reliance on the written declaration without liability to the principal or to any other person, regardless of whether the specified event or contingency has actually occurred.

(d) This section applies to a power of attorney whether executed before, on, or after January 1, 1991, if the power of attorney contains the designation described in subdivision (b).

(e) Subdivisions (b) and (c) do not provide the exclusive method by which a power of attorney may be limited to take effect upon the occurrence of a specified event or contingency.

SEC. 7. Section 5.5 of this act shall become operative only if Assembly Bill 835 of the 1989–90 Regular Session is chaptered and amends Section 2511 of the Civil Code, and this bill is chaptered after that bill, in which event Section 2511 of the Civil Code as amended by Section 5 of this bill shall not become operative.

CHAPTER 987

An act to amend Section 15702 of, and to add Section 15606.5 to, the Government Code, to add Section 3421 to the Public Resources Code, and to add Sections 7657.1, 7658.5, 8879, 11408, 12636, 30284, 32257, 38454, 40104, 41098, 43159, 45157, and 50112.5 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 15606.5 is added to the Government Code, to read:

15606.5. Notwithstanding any other provision of law, any regulation to be prescribed by the board shall become operative only if the board itself approves adoption of the regulation.

SEC. 2. Section 15702 of the Government Code is amended to read:

15702. (a) Any power granted to, or duty imposed on, the Franchise Tax Board by any provision of law may be exercised or performed by any officer or employee of the board authorized by the board unless it is expressly provided that the power or duty shall be exercised or performed only by the board itself.

(b) Notwithstanding any other provision of law, if any person requests in writing to the executive officer or the Franchise Tax Board that a specific proposed regulation be considered by the board itself, then any authority delegated to any officer or employee of the board to adopt that regulation is rescinded.

SEC. 3. Section 3421 is added to the Public Resources Code, to read:

3421. Every payment on a delinquent charge shall be applied as follows:

(a) First, to any interest due on the charge.

(b) Second, to any penalty imposed by this part.

(c) The balance, if any, to the charge itself.

SEC. 3.3. Section 7657.1 is added to the Revenue and Taxation Code, to read:

7657.1. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under

this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 3.5. Section 7658.5 is added to the Revenue and Taxation Code, to read:

7658.5. Every payment on a delinquent tax shall be applied as follows:

(a) First, to any interest due on the tax.

(b) Second, to any penalty imposed by this part.

(c) The balance, if any, to the tax itself.

SEC. 4. Section 8879 is added to the Revenue and Taxation Code, to read:

8879. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or

transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 4.5. Section 11408 is added to the Revenue and Taxation Code, to read:

11408. (a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 5. Section 12636 is added to the Revenue and Taxation Code, to read:

12636. Every payment on a delinquent tax shall be applied as follows:

(a) First, to any interest due on the tax.

(b) Second, to any penalty imposed by this part.

(c) The balance, if any, to the tax itself.

SEC. 5.5. Section 30284 is added to the Revenue and Taxation Code, to read:

30284. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest thereto.

(b) For purposes of this section, a person's failure to make a timely report, return, or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 6. Section 32257 is added to the Revenue and Taxation Code, to read:

32257. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance

on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 6.5. Section 38454 is added to the Revenue and Taxation Code, to read:

38454. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 7. Section 40104 is added to the Revenue and Taxation Code, to read:

40104. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the surcharge imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to surcharge under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the surcharge, or stating the conditions under which the activity or transaction is subject to the surcharge.

(3) The liability for surcharges applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 8. Section 41098 is added to the Revenue and Taxation Code, to read:

41098. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the surcharge imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the surcharge under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the surcharge, or stating the conditions under which the activity or transaction is subject to the surcharge.

(3) The liability for surcharges applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 9. Section 43159 is added to the Revenue and Taxation Code, to read:

43159. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 10. Section 45157 is added to the Revenue and Taxation Code, to read:

45157. (a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or

transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

SEC. 11. Section 50112.5 is added to the Revenue and Taxation Code, to read:

50112.5. (a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

CHAPTER 988

An act to add Section 395.07 to the Military and Veterans Code, relating to state employees.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 395.07 is added to the Military and Veterans Code, to read:

395.07. (a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1 of the Government Code or Sections 395.01 and 395.02, any officer or employee of the legislative, executive, or judicial department of the state, who, as a member of the California National Guard or a United States Military Reserve organization, is called into active duty as a result of the Iraq-Kuwait crisis, shall have the benefits provided for in subdivision (b).

(b) (1) Subject to paragraph (2), any officer or employee to which subdivision (a) applies, while on active duty, shall receive from the state, for a period not to exceed 180 days, as part of his or her compensation, the difference between the amount of his or her military pay and the amount the officer or employee would have received as a state officer or employee, including any merit raises which would otherwise have been granted during the time the individual was on active duty.

(2) Any individual receiving compensation pursuant to paragraph (1) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This paragraph shall not apply to compensation received pursuant to Section 19775 of the Government Code or Section 395.02.

(c) This section shall not apply to any active duty served voluntarily after the close of the Iraq-Kuwait crisis.

CHAPTER 989

An act relating to taxation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. The State Board of Equalization shall study the feasibility of using electronic fund transfers as a means for taxpayers to remit sales and use tax payments to the board, and shall submit a report of its findings to the Legislature no later than June 30, 1991. The study shall include, but not be limited to, all of the following:

(a) An estimate of all costs the board would incur, including expenses for all necessary equipment and personnel, to establish, maintain, and administer a system for taxpayers to remit sales and use tax payments to the board by electronic fund transfer. This estimate shall include the costs of contracts to third-party vendors.

(b) An estimate of the increase in cash-flow to the state, and the average cash-flow lost by taxpayers with small and large taxable receipts if the electronic fund transfer system is implemented.

(c) A study of the experience of other states which have used electronic fund transfers for the payment of taxes, including, but not limited to, large states such as the State of Texas.

SEC. 2. The Franchise Tax Board shall study the feasibility of using electronic fund transfers as a means for taxpayers to remit tax payments to the board and shall submit a report of its findings to the Legislature no later than June 30, 1991. The study shall include, but not be limited to, all of the following:

(a) An estimate of all costs the board would incur, including expenses for all necessary equipment and personnel, to establish, maintain, and administer a system for taxpayers to remit payments to the board by electronic fund transfers. This estimate shall include the costs of contracts to third-party vendors.

(b) An estimate of the increase in cash-flow to the state and the average cash-flow lost by taxpayers if an electronic fund transfer system is implemented.

(c) A study of the experience of other states which have used electronic fund transfers for the payment of taxes including, but not limited to, large states such as the State of Texas.

SEC. 3. The Employment Development Department shall study the feasibility of using electronic fund transfers as a means for employers to remit tax payments to the department and shall submit a report of its findings to the Legislature no later than June 30, 1991. The study shall include, but not be limited to, all of the following:

(a) An estimate of all costs the department would incur, including expenses for all necessary equipment and personnel, to establish, maintain, and administer a system for employers to remit payments

to the department by electronic fund transfers. This estimate shall include the costs of contracts to third-party vendors.

(b) An estimate of the increase in cash-flow to the state and the average cash-flow lost by employers if an electronic fund transfer system is implemented.

(c) A study of the experience of other states which have used electronic fund transfers for the payment of taxes including, but not limited to, large states such as the State of Texas.

CHAPTER 990

An act to add Section 10610.05 to the Health and Safety Code, relating to disposition of human remains, and making an appropriation therefor.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 10610.05 is added to the Health and Safety Code, to read:

10610.05. (a) Effective January 1, 1991, an additional fee of three dollars ($3) for issuance of a permit for disposition of human remains pursuant to Section 10610 shall be payable to the local registrar of births and deaths by the applicant for the permit. This amount shall be exempt from any adjustment made pursuant to Section 114.

(b) Notwithstanding any other provision of law, the local registrar of births and deaths shall pay into the Peace Officers' Training Fund, by the 10th of the month following the end of each calendar quarter one dollar ($1) of the fee collected pursuant to subdivision (a) for the training of peace officer members of county coroners' offices. The remaining funds collected pursuant to subdivision (a) shall be paid into the county treasury to be expended for indigent burial.

CHAPTER 991

An act to add Section 2291.7 to the Health and Safety Code, relating to vector control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

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

(a) Clear Lake is the largest, natural, freshwater lake within the boundaries of California and is a popular recreational area less than three hours from the Sacramento and San Francisco Bay areas.

(b) In 1986, travel-generated visitor spending in Lake County totaled $42.3 million with $1.79 million in state tax receipts.

(c) Clear Lake is a popular recreational fishery and is one of the few freshwater commercial fisheries in the state.

(d) Clear Lake provides habitat for endangered species, including the bald eagle.

(e) Clear Lake is the source for domestic drinking water for over one-half the residents of Lake County.

(f) Blue-green algae blooms have become a nuisance in Clear Lake, reducing the beneficial uses of the lake, primarily tourism, fishing, water sports, fish and wildlife habitat, and public water supply.

(g) Nuisance blue-green algae blooms result in odorous conditions and reduce enjoyment of Clear Lake and visitation to Lake County.

(h) High algae mass in Clear Lake increases the cost and severely decreases the quality of drinking water for residents and visitors of Lake County.

(i) Nuisance algae abatement is essential to the local economy of Lake County, beneficial to fish and wildlife in and around Clear Lake, and will reduce the cost and improve the quality of drinking water obtained from Clear Lake for the residents of Lake County, and it is, thus, critically essential to provide nuisance algae abatement authority to the mosquito abatement districts in Lake County.

SEC. 2. Section 2291.7 is added to the Health and Safety Code, to read:

2291.7. In Lake County, any mosquito abatement district, as authorized by the district board, may, notwithstanding Section 2291.3, conduct or contract for algae research projects and algae control or abatement projects for any part of the district. In undertaking these projects, the district board shall comply with the procedures set forth in subdivisions (a), (b), (c), and (d) in order to levy a benefit assessment for these projects.

(a) Prior to levying any benefit assessment, the board shall comply with all of the following:

(1) The board shall adopt a resolution which shall specify its intention to undertake the project. The resolution shall include all of the following:

(A) A description of the plan, including, but not limited to, all of the following:

(i) The causes of the algae.

(ii) Alternative methods and associated costs of algae prevention,

reduction, and control.

(iii) Mitigation measures, including mitigation of the effects of potential treatment on humans, and on fish and wildlife habitat.

(iv) The agency or agencies with responsibilities for algae prevention, reduction, and control. The plan may reference the environmental document prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(B) The establishment of a benefit assessment zone or zones.

(C) A description of the properties to be assessed.

(D) A description of the cost of each assessment.

(E) A statement specifying the duration of the assessment.

(2) The board shall hold public hearings after notice has been published for three successive weeks in a newspaper of general circulation published in the county seat.

(3) The board shall send notice of the resolution and of the hearings to those owners of property to be assessed at least 14 days prior to the public hearing.

(4) After the public hearing, the plan shall be approved by a majority of the owners of property to be assessed. The board shall take no action to implement the plan or the assessment until after the plan is approved by a majority of owners of property to be assessed.

(b) Any herbicide application for the purpose of algae abatement pursuant to this section shall be subject to the approval of the Department of Fish and Game. The department shall grant approval unless it is determined that the application would cause significant diminishment of green or yellow-green algae or zooplankton.

(c) The assessments levied pursuant to this section shall be collected at the same time, and in the same manner, as county taxes. The county may deduct its actual costs incurred for collecting the assessments before remitting the balance to the district. The assessments shall be a lien on all the property benefited thereby. Liens for the assessments shall be of the same force and effect as liens for taxes, and their collection may be enforced by the same means as for the enforcement of liens for county taxes.

(d) For the purposes of an assessment levied under this section, all properties so assessed within a given zone are equally benefited.

The requirements set forth in this section shall only apply to algae research projects and algae control or abatement projects in Lake County.

In enacting this section, the Legislature does not intend to amend the power of any other district to use any other power authorized by this chapter.

SEC. 3. Due to the unique circumstances concerning the extensive fresh water lakes in Lake County, the nature and extent of the algae problem in Lake County makes it necessary that mosquito abatement districts in that county be provided with full authority to conduct algae research projects and algae control or abatement projects, and 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. 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:

Lake County has extensive systems of lakes and waterways which have a severe algae problem. Therefore, it is necessary that this act take effect immediately.

CHAPTER 992

An act to amend Section 3914 of the Public Resources Code, and to amend Sections 75.54, 97.35, 276, 1608, 1637, 2922, 3693.1, 3712, 4336, 4337, 4673.1, 4837.5, 4985.2, and 5140 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 3914 of the Public Resources Code is amended to read:

3914. The board of supervisors, may require, by resolution, that any person filing an affidavit pursuant to Section 3913 or any person filing a notice of intent to hold, demonstrate proof of payment of any unsecured tax levied against the mining claim on which the affidavit or notice of intent to hold is filed, along with any delinquent unsecured taxes levied against the person filing the affidavit or notice of intent to hold, prior to the recordation of the affidavit or notice of intent to hold.

If a resolution is adopted by the board of supervisors pursuant to this section, it may include the following provisions, and any other provisions determined by the board as necessary to carry out the intent of this section:

(a) A provision prohibiting the county recorder from accepting the affidavit or notice of intent to hold for recordation without the tax collector's certification that the taxes have been paid.

(b) A provision requiring the following:

(1) That, when taxes are paid, the tax collector issue a receipt or certificate of payment for use in certification of the affidavit or notice of intent to hold.

(2) That the county recorder forward the affidavit or notice of intent to hold to the tax collector if the county recorder receives an affidavit for recording by mail and the affidavit or notice of intent to hold does not contain the tax collector's certification that the taxes have been paid.

(3) That, if applicable, the tax collector then certify that the taxes have been paid on the face of the affidavit or notice of intent to hold and return the document to the county recorder for recording.

(4) That, if the taxes have not been paid, the tax collector return the affidavit unrecorded to the filer.

SEC. 2. Section 75.54 of the Revenue and Taxation Code is amended to read:

75.54. (a) Taxes on the supplemental roll become a lien against the real property on the date of the change in ownership or completion of new construction unless by other provisions of law the taxes are not a lien on real property.

(b) With respect to taxes which are not a lien on real property that have become delinquent on the supplemental roll, the tax collector may use the procedures applicable to the collection of delinquent taxes on the unsecured roll for collection of the tax. If taxes which are not a lien on real property remain unpaid at the time set for declaration of tax default, following a delinquency in the payment of the second installment of the taxes, the taxes and any penalties and costs thereon shall be transferred to the unsecured roll for collection.

(c) Notwithstanding subdivision (a), in the event there is a subsequent change in ownership following an initial change in ownership or completion of new construction, which occurs before the mailing of the supplemental tax billing attributable to the initial change in ownership or completion of new construction, then the lien for supplemental taxes is extinguished and that portion of the supplemental assessment attributable to the assessee from the date of the initial change in ownership or completion of new construction to the date of the subsequent change in ownership shall be entered on the unsecured roll in the name of the person who would have been the assessee if the additional change in ownership had not occurred, and thereafter that portion of the tax shall be treated and collected like other taxes on the unsecured roll. The remaining portion of the supplemental tax attributable to the initial change in ownership becomes a lien against the real property on the date of the subsequent change in ownership which lien shall also secure any increase or decrease in supplemental taxes resulting from the determination of the new base year value required to be made following the subsequent change in ownership.

(d) In lieu of determining, as provided in subdivision (c), the portion of the supplemental assessment attributable to the person who would have been the assessee if the additional change in ownership had not occurred, a county may elect to compute that portion of the supplemental assessment attributable to the assessee from the first day of the month following the date of the initial change in ownership or completion of new construction to the date of the subsequent change in ownership.

SEC. 3. Section 97.35 of the Revenue and Taxation Code is amended to read:

97.35. (a) In each county, other than the County of Ventura,

having within its boundaries a qualifying city, the computations made pursuant to Section 97, for the 1989–90 fiscal year and each fiscal year thereafter, shall be modified as follows:

With respect to tax rate areas within the boundaries of a qualifying city, there shall be excluded from the aggregate amount of "property tax revenue allocated pursuant to this chapter to local agencies, other than for a qualifying city, in the prior fiscal year," an amount equal to the sum of the amounts calculated pursuant to the TEA formula.

(b) (1) Except as otherwise provided in this section, each qualifying city shall, for the 1989–90 fiscal year and each year thereafter, be allocated by the auditor an amount determined pursuant to the TEA formula.

(2) For each qualifying city, the auditor shall, for the 1989–90 fiscal year and each year thereafter, allocate the amount determined pursuant to the TEA formula to all tax rate areas within that city in proportion to each tax rate area's share of the total assessed value in the city for the applicable fiscal year, and the amount so determined shall be subtracted from the county's proportionate share of property tax revenue for that fiscal year within those tax rate areas.

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 98, the auditor shall, for all tax rate areas in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 97 in the 1989–90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 98, the auditor shall, for the 1989–90 fiscal year and each year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 98 to jurisdictions in the tax rate area using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 97, in the 1990–91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to qualifying cities pursuant to this subdivision shall be deemed to be the "amount of property tax revenue allocated in the prior fiscal year."

(c) "TEA formula" means the Tax Equity Allocation formula, and shall be calculated by the auditor for each qualifying city as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall determine the total amount of property tax revenue to be allocated to all jurisdictions in all tax rate areas within the qualifying city, before the allocation and payment of funds in that fiscal year to a community redevelopment agency within the qualifying city, as provided in subdivision (b) of Section 33670 of the Health and Safety Code.

(2) The auditor shall determine the total amount of funds allocated in each fiscal year to a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(3) The auditor shall determine the total amount of funds paid in each fiscal year by a community redevelopment agency within the city to jurisdictions other than the city pursuant to subdivision (b) of Section 33401 and Section 33676 of the Health and Safety Code, and the cost to the redevelopment agency of any land or facilities transferred and any amounts paid to jurisdictions other than the city to assist in the construction or reconstruction of facilities pursuant to an agreement entered into under Section 33401 or 33445.5 of the Health and Safety Code.

(4) The auditor shall subtract the amount determined in paragraph (3) from the amount determined in paragraph (2).

(5) The auditor shall subtract the amount determined in paragraph (4) from the amount determined in paragraph (1).

(6) The amount computed in paragraph (5) shall be multiplied by the following percentages in order to determine the TEA formula amount to be distributed to the qualifying city in each fiscal year:

(A) For the first fiscal year in which the qualifying city receives a distribution pursuant to this section, 1 percent of the amount determined in paragraph (5).

(B) For the second fiscal year in which the qualifying city receives a distribution pursuant to this section, 2 percent of the amount determined in paragraph (5).

(C) For the third fiscal year in which the qualifying city receives a distribution pursuant to this section, 3 percent of the amount determined in paragraph (5).

(D) For the fourth fiscal year in which the qualifying city receives a distribution pursuant to this section, 4 percent of the amount determined in paragraph (5).

(E) For the fifth fiscal year in which the qualifying city receives a distribution pursuant to this section, 5 percent of the amount determined in paragraph (5).

(F) For the sixth fiscal year in which the qualifying city receives a distribution pursuant to this section, 6 percent of the amount determined in paragraph (5).

(G) For the seventh fiscal year and each fiscal year thereafter in which the city receives a distribution pursuant to this section, 7 percent of the amount determined in paragraph (5).

(d) "Qualifying city" means any city, except a qualifying city as defined in Section 97.3, which incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to subdivision (a) of Section 97 in the 1988–89 fiscal year which is less than 7 percent of the amount of property tax revenue computed as follows:

(1) The auditor shall determine the total amount of property tax revenue allocated to the city in the 1988–89 fiscal year.

(2) The auditor shall subtract the amount in the 1988–89 fiscal year determined in paragraph (3) of subdivision (c) from the amount determined in paragraph (2) of subdivision (c).

(3) The auditor shall subtract the amount determined in

paragraph (2) from the amount of property tax revenue determined in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.07, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.07, the city is not a qualifying city.

(e) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(f) Notwithstanding subdivision (b), in any fiscal year in which a qualifying city is to receive a distribution pursuant to this section, the auditor shall reduce the actual amount distributed to the qualifying city by the sum of the following:

(1) The amount of property tax revenue which was exchanged between the county and the qualifying city as a result of negotiation pursuant to Section 99.6.

(2) The amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax base of any locally imposed general or special tax, except any tax which was imposed after January 1, 1988. In the case of a tax which existed before January 1, 1988, this paragraph shall apply only with respect to an amount attributable to a reduction of the rate or base to a level lower than the rate or base applicable on January 1, 1988. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(3) The amount of property tax revenue received pursuant to this chapter in excess of the amount allocated for the 1986–87 fiscal year by all special districts which are governed by the city council of the qualifying city or whose governing body is the same as the city council of the qualifying city with respect to all tax rate areas within the boundaries of the qualifying city.

(g) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (e) and (f), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount which

exceeds the city's appropriations limit.

(h) The amount not distributed to the tax rate areas of a qualifying city as a result of this section shall be distributed by the auditor to the county.

(i) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section which is less than the amount the city would have been allocated without the application of the TEA formula.

(j) Notwithstanding any other provision of this section, the auditor shall not distribute any amount determined pursuant to this section to any qualifying city which has in the prior fiscal year used any revenues or issued bonds for the construction, acquisition, or development, of any facility which is defined in Section 103(b)(4), 103(b)(5), or 103(b)(6) of the Internal Revenue Code of 1954 prior to the enactment of the Tax Reform Act of 1986 (P.L. 99-514) and is no longer eligible for tax-exempt financing.

(k) A qualifying city, as defined in subdivision (d), shall not receive an allocation pursuant to this section in the 1989–90 fiscal year or in any succeeding fiscal year with respect to which the county in which the qualifying city is located has failed to notify the state pursuant to Sections 77300 and 77301 of the Government Code of the county's intent to opt into the system established by the Brown-Presley Trial Court Funding Act of 1988 for that fiscal year.

(*l*) Each qualifying city shall receive its fiscal year allocation pursuant to this section in the first fiscal year with respect to which the county in which it is located has notified the state of its intent to opt into the system.

SEC. 3.5. Section 276 of the Revenue and Taxation Code is amended to read:

276. (a) A claimant for the disabled veterans' property tax exemption for the 1976–77 fiscal year or any year thereafter may qualify for a partial exemption if the claimant fails to file the required affidavit with the assessor by 5 p.m. on April 15 of the calendar year in which the fiscal year begins, but files the claim on or before the following December 1. Commencing with the 1979–80 assessment year, late-filed claims for the forty thousand dollar ($40,000) exemption provided in Section 205.5 shall receive the lesser of thirty-two thousand dollars ($32,000) or 80 percent of the full value of the dwelling. Late-filed claims for the sixty thousand dollar ($60,000) exemption provided in Section 205.5, when filed in conjunction with late-filed claims for the forty thousand dollar ($40,000) exemption, shall receive the lesser of forty-eight thousand dollars ($48,000) or 80 percent of the full value of the dwelling. Late-filed claims for the sixty thousand dollar ($60,000) exemption, when filed in conjunction with timely filed claims for the forty thousand dollar ($40,000) exemption, shall receive the lesser of fifty-six thousand dollars ($56,000) or forty thousand dollars ($40,000) plus 80 percent of the full value of the dwelling over forty thousand dollars ($40,000). Commencing with the 1984–85 assessment year,

late-filed claims for the one hundred thousand dollar ($100,000) exemption provided in Section 205.5 shall receive the lesser of eighty thousand dollars ($80,000) or 80 percent of the full value of the dwelling. Commencing with the 1990–91 assessment year, late-filed claims for the one hundred fifty thousand dollar ($150,000) exemption provided in Section 205.5, when filed in conjunction with late-filed claims for the one hundred thousand dollar ($100,000) exemption, shall receive the lesser of one hundred twenty thousand dollars ($120,000) or 80 percent of the full value of the dwelling. Commencing with the 1990–91 assessment year, late-filed claims for the one hundred fifty thousand dollar ($150,000) exemption, when filed in conjunction with timely filed claims for the one hundred thousand dollar ($100,000) exemption, shall receive the lesser of one hundred forty thousand dollars ($140,000) or one hundred thousand dollars ($100,000) plus 80 percent of the full value of the dwelling over one hundred thousand dollars ($100,000).

(b) On those claims filed pursuant to subdivision (a) after November 15, this exemption may be applied to the second installment, and if applied to the second installment, the first installment will still become delinquent on December 10, and the delinquent penalty provided for in this division will attach if the tax amount due is not paid.

If this exemption is applied to the second installment and if both installments are paid on or before December 10, or if the reduction in taxes from this exemption exceeds the amount of taxes due on the second installment, a refund shall be made to the taxpayer upon a claim submitted by the taxpayer to the auditor.

SEC. 4. Section 1608 of the Revenue and Taxation Code is amended to read:

1608. Notwithstanding the provisions of Section 1607, the county board may, in its discretion, waive the examination of the person or agent making the application, if the board and the assessor are satisfied that the issues raised by the application have been considered by the board in previous years or are fully presented in the application, and if the person or agent making the application requests such waiver in his or her application. The board (whether meeting as a board of equalization or as a board of supervisors) shall promptly act upon such request for waiver and shall give the applicant written notice of its decision thereon. If the board waives the examination of the person or agent making the application, it shall give such person or agent written notice of its decision on the merits of the application promptly after making such decision.

SEC. 5. Section 1637 of the Revenue and Taxation Code is amended to read:

1637. Hearings before an assessment hearing officer shall be conducted pursuant to the provisions of Article 1 (commencing with Section 1601) governing equalization proceedings by a county board of equalization or an assessment appeals board. The assessment hearing officer may conduct hearings on applications where:

(a) The applicant is the assessee and has filed an application under Section 1603;

(b) For counties in which the board of supervisors has not adopted the provisions of Section 1641.1, the total assessed value of the property under consideration, as shown on the current assessment roll, does not exceed one hundred thousand dollars ($100,000); or the property under consideration is a single-family dwelling, condominium or cooperative, or a multiple-family dwelling of four units or less regardless of value; and

(c) The applicant has requested that the hearing be held before an assessment hearing officer.

(d) In addition to subdivisions (a) and (c), the board of supervisors may, by resolution, require the assent of the assessor to hearings before an assessment hearing officer in all cases in which the total assessed value on the current roll of the property under consideration exceeds a sum set by the resolution. However, that requirement shall not apply in cases involving owner-occupied residential property.

SEC. 6. Section 2922 of the Revenue and Taxation Code is amended to read:

2922. (a) Taxes on the unsecured roll as of July 31, if unpaid, are delinquent August 31 at 5 p.m. and thereafter subject to a delinquent penalty of 10 percent.

(b) Taxes added to the unsecured roll after July 31, if unpaid are delinquent and subject to a penalty of 10 percent at 5 p.m. on the last day of the month succeeding the month of enrollment.

(c) Taxes transferred to the unsecured roll pursuant to any provision of law and already subject to penalties also transferred, shall be subject only to the additional penalties and costs prescribed in subdivisions (d) and (e), which shall attach beginning July 1 and on the first day of each month thereafter.

(d) Unsecured taxes remaining unpaid at 5 p.m. on the last day of the second month after the 10-percent penalty attaches shall be subject to an additional penalty of 1 1/2 percent attaching on the first day of each succeeding month on the amount of the original tax. The additional penalties shall continue to attach until the time of payment or until the time a court judgment is entered for the amount of unpaid taxes and penalties, whichever occurs first.

(e) In addition to the penalties imposed by this section, the tax collector may collect actual costs of collection incurred by the county up to the time the delinquency is paid.

(f) When the last day of a month falls on Saturday, Sunday, or a legal holiday, any penalty to which the tax becomes subject on that date shall not attach if the tax collector receives payment in full by 5 p.m. of the next business day.

SEC. 7. Section 3693.1 of the Revenue and Taxation Code is amended to read:

3693.1. Notwithstanding Section 3693, if the high bid is in excess of five thousand dollars ($5,000), the tax collector may make the sale

a cash or credit transaction. In the event the tax collector approves the successful purchaser's request to treat the sale as a credit transaction, five thousand dollars ($5,000) or 10 percent of the purchase price, whichever is greater, shall be deposited with the tax collector and the balance of the purchase price shall be paid in cash in lawful money of the United States or negotiable paper as specified by the tax collector within a period specified by the tax collector not to exceed 90 days from the date of the auction as a condition precedent to the transfer of title to that successful purchaser. Failure on the part of the successful bidder to consummate the sale within the period specified by the tax collector shall result in the forfeiture of the deposit and all rights he or she may have with respect to that property. Any forfeiture of deposit shall be distributed to the county general fund and shall not apply to outstanding delinquent taxes. Upon forfeiture the right of redemption shall revive.

SEC. 8. Section 3712 of the Revenue and Taxation Code is amended to read:

3712. The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except:

(a) Any lien for installments of taxes and special assessments, which installments will become payable upon the secured roll after the time of the sale.

(b) The lien for taxes or assessments or other rights of any taxing agency which does not consent to the sale under this chapter.

(c) Liens for special assessments levied upon the property conveyed which were, at the time of the sale under this chapter, not included in the amount necessary to redeem the tax-defaulted property, and, where a taxing agency which collects its own taxes has consented to the sale under this chapter, not included in the amount required to redeem from sale to the taxing agency.

(d) Easements constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.

(e) Unaccepted, recorded, irrevocable offers of dedication of the property to the public or a public entity for a public purpose, and recorded options of any taxing agency to purchase the property or any interest therein for a public purpose.

(f) Unpaid assessments under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) which are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8.

(g) Any federal Internal Revenue Service liens which, pursuant to provisions of federal law, are not discharged by the sale, even though the tax collector has provided proper notice to the Internal Revenue Service before that date.

SEC. 9. Section 4336 of the Revenue and Taxation Code is amended to read:

4336. When property is redeemed on which delinquent taxes

have been paid in installments, there shall be credited on the amount necessary to redeem the total amount of back taxes previously paid, including an allowance for interest paid pursuant to Section 4221. The credit shall be allowed after computation of the amount necessary to redeem.

SEC. 10. Section 4337 of the Revenue and Taxation Code is amended to read:

4337. When payment of delinquent taxes in installments on any property was started under any provision of law and payment of delinquent taxes in installments on the property is later started after default in payment, there shall be credited on the amount payable the total amount of back taxes paid during the course of the defaulted plan or plans, including an allowance for interest paid pursuant to Section 4221. This credit is in addition to and not a substitute for the payment of any part of any installment payable and shall be allowed after the first installment is paid.

SEC. 11. Section 4673.1 of the Revenue and Taxation Code is amended to read:

4673.1. After satisfaction of the amount specified in Sections 4672, 4672.1, and 4673, the proceeds shall be distributed as follows:

(a) An amount of the proceeds up to but no greater than the amount required, at the time of sale, to redeem the property from tax default and the sale to any taxing agency entitled to share in the proceeds shall be distributed as follows:

(1) A pro rata share shall be distributed to each assessment fund in an amount bearing the same proportion as the assessment due each fund bears to the total amount of taxes and assessments necessary to redeem the property at the time of sale.

(2) The remaining balance of the proceeds to be distributed under this section shall be distributed to each tax fund in an amount bearing the same proportion to the balance remaining as the tax rate for each fund bears to the total tax rate applicable to the property for the fiscal year preceding that in which the property was sold.

(b) After satisfaction of the amounts specified in subdivision (a), an amount of the proceeds necessary to satisfy current taxes and assessments and applicable penalties and costs thereon for the fiscal year in which the tax sale is held shall be distributed as provided in Chapter 1a (commencing with Section 4653) of this part. Current taxes and assessments referred to herein include taxes and assessments which would have been levied on the property if the property were not tax-deeded to any taxing agency and remains subject to sale by, or redemption from, the taxing agency. In the case of sales completed between March 1 and July 1, "current taxes and assessments" shall include amounts representing tax liens disencumbered by the tax sale.

SEC. 12. Section 4837.5 of the Revenue and Taxation Code is amended to read:

4837.5. Notwithstanding any other provision of law, taxes due, whether secured or unsecured, on escape assessments for prior fiscal

years, where the error causing the escape assessment was not that of the assessee, or taxes due because of the correction of any assessor's error for prior fiscal years under this article, where that error was made without fault on the part of the assessee, may be paid over a four-year period at the option of the assessee if: (1) the additional tax is over five hundred dollars ($500), and (2) a written request for installment payment is filed by the assessee with the tax collector prior to the time the second installment of taxes on the secured roll becomes delinquent, or by the last day of the month following the month in which the tax bill is mailed, whichever is later. The tax collector shall include with the property tax bill a notice of the payment provisions of this section.

If payment by installments is requested, 20 percent or more of the tax shall be paid no later than the deadline for filing the written request. The current taxes and prior year taxes with penalties and costs thereon shall be paid with or prior to the initial installment payment. In each succeeding fiscal year, the assessee shall pay, before the delinquency date of the second installment of current taxes on the secured roll, all current year taxes, and a sum at least sufficient to reduce the outstanding balance of the tax by 20 percent of the original amount.

No penalties shall be charged so long as installment payments are made timely; and, in the case of secured taxes, so long as all payments are made timely, an affidavit regarding the property shall not be published pursuant to Section 3371.

If any installment is not paid timely, or if the property on the secured roll becomes tax defaulted, or if the property changes ownership, or if taxes for the property on the unsecured roll are not paid before becoming delinquent, the balance of the tax remaining to be paid shall immediately become due and payable, and no further installment payments for that escape assessment or correction shall be authorized. The tax collector shall inform the auditor of the defaulted, off-roll installment plan and of the delinquent amount remaining unpaid.

The auditor shall add the unpaid balance, plus penalties and costs thereon, to the current roll, adjust the tax collector's charge accordingly, and the remaining balance of the tax shall become subject to all of the provisions of this division applicable to delinquent taxes.

The tax collector shall maintain records listing the current status of all the installment accounts authorized under this section. The status of each installment account shall be entered on the current roll and the tax collector may file for record with the county recorder a certificate pursuant to Section 2191.3.

When the installment account is paid in full or placed on the tax rolls due to a defaulted payment plan and the tax collector has filed for record a certificate of lien, the tax collector shall also file for record a release of lien. The filings of the certificates of lien and release of lien shall not be subject to recording fees.

SEC. 13. Section 4985.2 of the Revenue and Taxation Code is amended to read:

4985.2. Any penalty, costs, or other charges resulting from tax delinquency may be canceled by the auditor or the tax collector with the approval of the board of supervisors upon a finding of any of the following:

(a) Failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, provided the principal payment for the proper amount of the tax due is made no later than June 30 of the fiscal year following the fiscal year in which the tax became delinquent.

(b) There was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of the tax due is made within 10 days after the notice of shortage is mailed by the tax collector.

(c) The cancellation was ordered by a local, state, or federal court.

SEC. 14. Section 5140 of the Revenue and Taxation Code is amended to read:

5140. The person who paid the tax, his or her guardian or conservator, the executor of his or her will, or the administrator of his or her estate may bring an action only in the superior court against a county or a city to recover a tax which the board of supervisors of the county or the city council of the city has refused to refund on a claim filed pursuant to Article 1 (commencing with Section 5096) of this chapter. No other person may bring such an action; but if another should do so, judgment shall not be rendered for the plaintiff.

SEC. 15. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section do not apply to the exemption of property for purposes of ad valorem property taxation provided by Section 276 of the Revenue and Taxation Code as amended 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. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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. 17. It is the intent of the Legislature that the amendments made to subdivision (a) of Section 276 of the Revenue and Taxation Code by this act shall be applicable to claims filed for the 1990–91

fiscal year and fiscal years thereafter. The Legislature declares that the public purpose accomplished thereby is to correct an inadvertent omission, with respect to earlier legislation increasing the disabled veterans' exemption, which precludes late filers from receiving the appropriate amount of exemption for the 1990–91 fiscal year.

CHAPTER 993

An act to add Section 164.53 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 164.53 is added to the Streets and Highways Code, to read:

164.53. (a) A local agency may request authorization from the commission to make advance expenditures of funds, other than state or federal funds, for a project which is included in the priority list for the allocation of transit capital improvement funds pursuant to Section 99317 of the Public Utilities Code, or is included in the adopted state transportation improvement program, or is specifically authorized by Chapter 3 (commencing with Section 99600) of Part 11.5 of Division 10 of the Public Utilities Code.

(b) If the commission approves a request submitted pursuant to subdivision (a), the approved advance expenditures shall be considered either part of the nonfederal share of project costs, or part of the match from public or private sources, for projects which are included in the transit capital improvement program pursuant to Section 99317 of the Public Utilities Code, or included in the state transportation improvement program, or which are authorized by Chapter 3 (commencing with Section 99600) of Part 11.5 of Division 10 of the Public Utilities Code.

(c) The commission's approval of a request pursuant to subdivision (b) does not, in and of itself, constitute an obligation to allocate state funds for the project.

(d) The commission, in consultation with the department and local transportation officials, shall develop and adopt guidelines to implement this section. The guidelines shall include a requirement that the advance expenditure of funds will result in the completion of an operable segment of a transportation project. The acquistion of right-of-way needed either for a usable urban or commuter rail project or an operable segment of an urban or commuter rail project meets that requirement.

(e) The commission shall prepare a report on the progress and impact of the advance expenditure program authorized by this

section and shall include the report as an element of the annual report to the Legislature required pursuant to Sections 14535 and 14536 of the Government Code.

CHAPTER 994

An act to amend Section 4607.2 of, and to add Section 4351.6 to, the Civil Code, relating to family law.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 4351.6 is added to the Civil Code, to read:

4351.6. (a) It is the intent of the Legislature that the support person provide moral and emotional support for a person who alleges he or she is a victim of domestic violence in the proceedings specified in this section. The support person is not present as a legal advisor and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity.

(b) A support person may accompany either party to any proceeding for an order restraining the other party pursuant to paragraph (2), (3), or (6) of subdivision (a) of Section 4359 or paragraph (1) or (2) of subdivision (a) of Section 7020 7020 of the Civil Code, Section 527.6 of the Code of Civil Procedure, or Article 1 (commencing with Section 540) and Article 2 (commencing with Section 545) of Chapter 4 of Title 7 of Part 2 of the Code of Civil Procedure, and where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and his or her attorney.

(c) Notwithstanding any other provision of law to the contrary, if a court has issued a restraining order as specified in this section, a support person may accompany a party protected by a restraining order during a mediation session held pursuant to an action or proceeding under this part. The agency charged with providing family court services shall advise the party protected by a restraining order of the right to have a support person during mediation. A mediator may exclude a support person from a mediation session if the support person participates in the mediation session, acts as an advocate, or the presence of a particular support person is disruptive or disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the mediation and the support person shall be bound by the confidentiality of the

mediation.

(d) A support person may accompany a party in a proceeding subject to this section in court where there are allegations or threats of domestic violence and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and his or her attorney. 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 party protected by the order.

(e) Support persons shall not give legal advice.

SEC. 2. Section 4607.2 of the Civil Code is amended to read:

4607.2. (a) Notwithstanding Section 4607, in any proceeding in which mediation is required pursuant to Section 4607, where there has been a history of domestic violence between the parties, as domestic violence is defined in subdivision (b) of Section 542 of the Code of Civil Procedure, and where an order is in effect pursuant to paragraph (2) or (3) of subdivision (a) of Section 4359, Section 4516, or paragraph (1) or (2) of subdivision (a) of Section 7020 of this code, or Section 546 of the Code of Civil Procedure, at the request of the party protected by the order the parties shall meet with the mediator appointed pursuant to Section 4607 separately at separate times.

(b) Any intake form that an agency charged with providing family court services may require the parties to complete prior to the commencement of mediation shall include a provision which indicates that at the request of the party protected by the order the parties shall meet with the mediator appointed pursuant to Section 4607 separately at separate times.

(c) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified 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 995

An act to amend Section 32132 of, and to add Section 32138 to, the Health and Safety Code, relating to hospital districts.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 32132 of the Health and Safety Code is amended to read:

32132. (a) Except as otherwise provided in this section, the board of directors shall let any contract involving an expenditure of more than twenty-five thousand dollars ($25,000) for materials and supplies to be furnished, sold, or leased to the district, or any contract involving an expenditure of more than twenty-five thousand dollars ($25,000) for work to be done, to the lowest responsible bidder who shall give the security the board requires, or else reject all bids.

Except as otherwise provided in this section, for a local hospital district that is a small and rural hospital, as defined in Section 1188.855, the board of directors shall acquire materials and supplies which cost more than twenty-five thousand dollars ($25,000), but less than fifty thousand dollars ($50,000), through competitive means, except when the board determines either that (1) the materials and supplies, proposed for acquisition are the only materials and supplies which can meet the district's need, or (2) the materials and supplies are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. As used in this paragraph, "competitive means" has the same meaning as used in subdivision (b) of Section 32138.

(b) Subdivision (a) shall not apply to medical or surgical equipment or supplies, to professional services, or to electronic data processing and telecommunications goods and services.

(c) Bids need not be secured for change orders which do not materially change the scope of the work as set forth in a contract previously made if the contract was made after compliance with bidding requirements, and if each individual change order does not total more than 5 percent of the contract.

(d) As used in this section, "medical or surgical equipment or supplies" includes only equipment or supplies commonly, necessarily, and directly used by, or under the direction of, a physician and surgeon in caring for or treating a patient in a hospital.

(e) Nothing in this section shall prevent any district hospital from participating as a member of any organization described in Section 23704 of the Revenue and Taxation Code, nor shall this section apply to any purchase made, or services rendered, by the organization on behalf of a district hospital which is a member of the organization.

SEC. 2. Section 32138 is added to the Health and Safety Code, to

read:

32138. (a) The board of directors shall acquire electronic data processing and telecommunications goods and services through competitive means, except when the board determines either that (1) the goods and services proposed for acquisition are the only goods and services which can meet the district's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

(b) As used in this section, "competitive means" includes any appropriate means specified by the board, including, but not limited to, the preparation and circulation of a request for a proposal to an adequate number of qualified sources, as determined by the board in its discretion, to permit reasonable competition consistent with the nature and requirements of the proposed acquisition.

(c) When the board awards a contract through competitive means pursuant to this section, the contract award shall be based on the proposal which provides the most cost-effective solution to the district's requirements, as determined by the evaluation criteria specified by the board. The evaluation criteria may provide for the selection of a vendor on an objective basis other than cost alone.

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 996

An act to amend Sections 22206.5, 22726, 44929, and 87488 of the Education Code, relating to the State Teachers' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 22206.5 of the Education Code is amended to read:

22206.5. (a) Beginning in the 1989–90 fiscal year, and until the first fiscal year in which the Supplemental Benefit Maintenance Account established by Section 22300 derives sufficient resources from the General Fund pursuant to Section 23400.4 to provide purchasing power of 68.2 percent as authorized by Section 24703, the board shall transfer from the Teachers' Retirement Fund to the Supplemental Benefit Maintenance Account those funds which are necessary to provide purchasing power of 68.2 percent as authorized by Section 24703. This subdivision shall become inoperative in the first fiscal year following the joint determination by the board and the Director of Finance that the funds scheduled for transfer from the General Fund pursuant to Section 23400.4 to the Supplemental Benefit Maintenance Account are adequate to meet the purposes of Section 24703.

(b) The funds advanced pursuant to subdivision (a) and any funds appropriated by Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments shall be repaid from those funds transferred pursuant to Section 23400.4 which are in excess of the resources required to meet the purposes of Section 24703. Repayment shall commence in any year in which such excess funds exists and shall continue until the time all funds advanced under this section and any funds appropriated by Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments are repaid. Repayment shall include regular interest from the time funds are advanced or appropriated until the time of repayment. After full repayment is made, the Director of Finance shall, notwithstanding Section 23400.4, adjust the percentage of the General Fund transfer in the amount which causes the balance in the account to equal a three-year reserve at the end of the subsequent fiscal year. The Director of Finance may base the adjusted rate on data provided by the board for projected payments in subject years, projected payroll, projected interest accrual to the account, and any other factors deemed relevant by the board.

(c) Notwithstanding Section 24703 or any other provision of law, if the state's contributions to the Teachers' Retirement Fund provided by Section 23400.4 are, for any reason whatsoever, reduced or terminated before the Teachers' Retirement Fund is fully repaid, as provided in subdivision (b), for all advances or transfers made pursuant to subdivision (a) and for any appropriations made by Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments, all duties of the Teachers' Retirement Board to make the advances or transfers required by subdivision (a) and to make the distributions required by Section 24703 shall immediately cease and shall have no further force or effect.

(d) It is the intent of the Legislature, in enacting the Supplemental Benefit Maintenance Program which is embodied in this section and Section 22300, subdivision (b) of Section 23400.4,

Section 24703, subdivision (b) of Section 44929, and subdivision (b) of Section 87488, not to manifest any promise, except as provided in subdivision (c) of Section 23400.4, which, when accepted, would create a contract, express or implied. Notwithstanding any other provision of this part, nothing in the sections establishing the Supplemental Benefit Maintenance Program shall be construed as a basis for any implied contractual obligation, or as an element of exchange of consideration by a private party for consideration offered by the state, or as an intent to grant private rights of contract, or as conferring any vested right whatsoever on any present or future member, present or future annuitant, present or future surviving spouse of a present or future member or a present or future annuitant, surviving child of a present or future member or a present or future annuitant, or present or future beneficiary of the State Teachers' Retirement System.

(e) Upon the mandatory inclusion of all members of the system within the Social Security system, the board shall review the benefit structure established by Section 24703 and the funding mechanism provided therefor by this section and Section 23400.4 and shall be prepared to provide an alternate benefit structure similar to those set forth in the report of the system entitled "Development of an Alternative Retirement Plan," dated March 1, 1989, and prepared pursuant to Section 22240.

(f) The board shall report annually to the Director of Finance and the appropriate fiscal and policy committees of the Legislature upon the benefits paid pursuant to Section 24703 and all actions taken pursuant to Section 23400.4 and this section.

SEC. 1.5. Section 22726 of the Education Code is amended to read:

22726. Whenever the governing board of a school district or a community college district or a county superintendent of schools, by formal action, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county superintendent of schools would be served by encouraging the retirement of certificated employees and that the retirement will either: (1) result in a net savings to the district or county superintendent of schools, or (2) result in a reduction of the number of certificated employees as a result of declining enrollment, or (3) result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited to a member if all of the following conditions exist:

(a) The member is credited with five or more years of service and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer which shall specify the period.

(b) The employer transmits to the retirement fund an amount

determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit under this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22300 and shall be subject to Sections 22206.5 and 24703. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(d) The employer has considered the availability of teachers to fill the positions which would be vacated pursuant to this section.

(e) The community college district, school district, or county superintendent of schools has certified to the Teachers' Retirement Board, prior to the formal action becoming effective in the district or the office of the county superintendent of schools, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System, the district, or the county superintendent of schools.

The amount of service credit shall be two years regardless of credited service. The employer shall make the payment with respect to all eligible employees who retired pursuant to this section.

Any member who qualifies under this section and subsequently reenters the system, shall forfeit the service credit acquired under this section.

This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

This section, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 44929 of the Education Code is amended to read:

44929. Whenever the governing board of a school district or a county superintendent of schools, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county superintendent of schools would be served by encouraging the retirement of certificated employees and that the retirement will

either: (1) result in a net savings to the district or county superintendent of schools, or (2) result in a reduction of the number of certificated employees as a result of declining enrollment, or (3) result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to a certificated employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district or county superintendent of schools which shall specify the period.

(b) The district or county superintendent of schools transmits to the retirement fund an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22300 and shall be subject to Sections 22206.5 and 24703. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The district or county superintendent of schools transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the school district or the county superintendent of schools has considered the availability of teachers to fill the positions which would be vacated pursuant to this section.

(e) The district or county superintendent of schools has certified to the Teachers' Retirement Board, prior to the formal action becoming effective in the school district or the office of the county superintendent of schools, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System, the school district, or the county superintendent of schools.

The amount of service credit shall be two years regardless of credited service. The school district or county superintendent of schools shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726

and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 87488 of the Education Code is amended to read:

87488. Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of certificated employees and that the retirement will either: (1) result in a net savings to the district, or (2) result in a reduction of the number of certificated employees as a result of declining enrollment, or (3) result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to a certificated employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district which shall specify the period.

(b) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the amount the member would have received without the service credit and an amount determined by the Teacher' Retirement Board which equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22300 and shall be subject to Sections 22206.5 and 24703. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The governing board transmits to the retirement fund the

administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the community college district has considered the availability of teachers to fill the positions which would be vacated pursuant to this section.

(e) The community college district has certified to the Teachers' Retirement Board, prior to the formal action becoming effective in a community college district, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System or the district.

The amount of service credit shall be two years regardless of credited service. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726 and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 87488 of the Education Code is amended to read:

87488. Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will either: (1) result in a net savings to the district, or (2) result in a reduction of the number of academic employees as a result of declining enrollment, or (3) result in the retention of faculty who are qualified to teach in areas of teacher shortage, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to an academic employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district which shall specify the period.

(b) The governing board transmits to the retirement fund an

amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22300 and shall be subject to Sections 22206.5 and 24703. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the community college district has considered the availability of academic employees to fill the positions which would be vacated pursuant to this section.

(e) The community college district has certified to the Teachers' Retirement Board, prior to the formal action becoming effective in a community college district, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System or the district.

The amount of service credit shall be two years regardless of credited service. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726 and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section, 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. Section 4 of this bill incorporates amendments to Section 87488 of the Education Code proposed by both this bill and SB 2298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends

Section 87488 of the Education Code, and (3) this bill is enacted after SB 2298, in which case Section 87488 of the Education Code, as amended by SB 2298, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. 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 that school districts, county superintendents of schools, and community college districts may be permitted to obtain savings through early retirement of certificated employees at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 997

An act to amend Section 3751 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 3751 of the Labor Code is amended to read:

3751. (a) No employer shall exact or receive from any employee any contribution, or make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this division. Violation of this subdivision is a misdemeanor.

(b) If an employee has filed a claim form pursuant to Section 5401, a provider of medical services shall not, with actual knowledge that a claim is pending, collect money directly from the employee for services to cure or relieve the effects of the injury for which the claim form was filed, unless the medical provider has received written notice that liability for the injury has been rejected by the employer

and the medical provider has provided a copy of this notice to the employee. Any medical provider who violates this subdivision shall be liable for three times the amount unlawfully collected, plus reasonable attorney's fees and costs.

CHAPTER 998

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

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

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

22658. (a) Except as provided in Section 22658.2, the owner or person in lawful possession of any private property may, subsequent to notifying, by telephone or, if impractical, by the most expeditious means available, the city police or county sheriff, whichever is appropriate, cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency, and the sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the city police or county sheriff, as appropriate, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

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

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

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

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

(e) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a), whichever is applicable, or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

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

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

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

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

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

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

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

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

SEC 2. Section 22658 of the Vehicle Code is amended to read:

22658. (a) Except as provided in Section 22658.2, the owner or person in lawful possession of any private property may, subsequent to notifying, by telephone or, if impractical, by the most expeditious means available, the city police or county sheriff, whichever is appropriate, cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency, and the sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the city police or county sheriff, as appropriate, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The person causing removal of the vehicle shall, if the person knows or is able to ascertain from the registration records of the Department of Motor Vehicles the name and address of the

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

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

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

(e) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

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

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

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner of private property or that owner's agent pursuant to this section if the owner of the vehicle or the owner's agent returns to the vehicle before it is removed from the private

property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

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

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

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

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

Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

SEC. 3. Section 2 of this bill incorporates amendments to Section 22658 of the Vehicle Code proposed by both this bill and SB 1763. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 22658 of the Vehicle Code, and (3) this bill is enacted after SB 1763, in which case Section 1 of this bill shall not become operative.

CHAPTER 999

An act to add Section 1747.8 to the Civil Code, relating to credit cards.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 1747.8 is added to the Civil Code, to read:

1747.8. (a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts credit

cards for the transaction of business shall do any of the following:

(1) Require the cardholder, as a condition to accepting the credit card, to write any personal identification information upon the credit card transaction form or otherwise.

(2) Require the cardholder, as a condition to accepting the credit card, to provide personal identification information, which the person, firm, partnership, association, or corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.

(3) Utilize, in any credit card transaction, a credit card form which contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder.

(b) For purposes of this section "personal identification information," means information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number.

(c) Subdivision (a) does not apply to cash advance transactions, or to personal identification information, or forms with preprinted spaces for personal identification information that the person, firm, partnership, association, or corporation accepting the credit card is contractually obligated to provide in order to complete the credit card transaction, or is required for a special purpose incidental but related to the individual credit card transaction, including, but not limited to, information relating to shipping, delivery, servicing, or installation of the purchased merchandise or for special orders.

(d) Any person who violates this section shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each subsequent violation, to be assessed and collected in a civil action brought by the person paying with a credit card, by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred. However, no civil penalty shall be assessed for a violation of this section if the defendant shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the defendant's maintenance of procedures reasonably adopted to avoid such an error. When collected, the civil penalty shall be payable, as appropriate, to the person paying with a credit card who brought the action, or to the general fund of whichever governmental entity brought the action to assess the civil penalty.

(e) The Attorney General, or any district attorney or city attorney within his or her respective jurisdiction, may bring an action in the superior court in the name of the people of the State of California to enjoin violation of subdivision (a) and, upon notice to the defendant of not less than five days, to temporarily restrain and enjoin the violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated subdivision (a), the court may issue an injunction restraining further violations, without requiring proof that any person has been damaged by the violation. In these

proceedings, if the court finds that the defendant has violated subdivision (a), the court may direct the defendant to pay any or all costs incurred by the Attorney General, district attorney, or city attorney in seeking or obtaining injunctive relief pursuant to this subdivision.

(f) Actions for collection of civil penalties under subdivision (d) and for injunctive relief under subdivision (e) may be consolidated.

CHAPTER 1000

An act to add Chapter 14 (commencing with Section 18995) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) The current drug epidemic has diminished the quality of life for many residents of housing projects in large urban areas. Children, many of who begin life as substance addicted babies, never experience life in an environment without drugs and drug-related crimes in their homes and communities.

(2) Local housing authorities cannot attack the drug epidemic on their own. There must be an interagency collaboration with other governmental agencies including cities, counties, and institutions of higher education to provide innovative solutions to make and keep public housing drug free.

(3) The recurrence of abuse of drugs and alcohol may lead to homelessness, high-risk behavior, school dropouts, incarceration, and child abuse and neglect.

(b) It is the intent of the Legislature to foster a closer working relationship between counties and housing authorities, and to encourage interagency collaboration to prevent initial substance abuse or its recurrence among residents of housing projects.

SEC. 2. Chapter 14 (commencing with Section 18995) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 14. FAMILY DRUG FREE HOUSING PILOT PROJECT

18995. (a) The State Department of Alcohol and Drug Programs shall, pursuant to the concurrence of the local housing authority and county board of supervisors, establish pilot project sites in up to two counties for the Family Drug Free Housing Pilot Project.

(b) (1) Counties chosen as project sites shall develop and implement a plan for interagency collaboration with a participating

local housing authority.

(2) (A) Each participating county or housing authority may provide support services at the pilot project site to families with a history of substance abuse, or who are at risk of becoming substance abusers, and who reside in local housing authority projects, or may refer those families to those support services.

(B) Support services provided at the project site or to which families are referred pursuant to this section include those services which seek to prevent the initial abuse of drugs or alcohol, or both, by high-risk families or to foster continued involvement of families in drug or alcohol recovery programs, or both. These prevention services may be provided by resident onsite managers.

(c) The department may encourage counties and housing authorities implementing the pilot programs to involve schools of social work as cooperating agencies in the provision of support services within a housing authority setting.

(d) The department may establish guidelines for the pilot projects based on the requirements of the federal Drug-Free Schools and Communities Act of 1986 (subchapter 5 (commencing with Section 3171) of Chapter 47 of Title 20 of the United States Code).

18996. (a) The pilot project shall remain in operation for a period of three years.

(b) By June 30, 1993, each county and housing authority in which the pilot project is implemented shall report to the State Department of Alcohol and Drug Programs on the project in that county .

(c) The State Department of Alcohol and Drug Programs shall report to the appropriate committees of the Legislature on an evaluation of the project, incorporating information received by that department from the reports provided by each county pursuant to subdivision (b).

18997. The drug-free housing pilot project in each pilot project county shall be deemed successful if all of the following occur, to the extent they are applicable:

(a) The recidivism of the housing project population is less than the average recidivism for a similar population where the support services required by this section have not been provided. Measurements of recidivism may include entrance or reentrance into a drug treatment program, the criminal justice system, or the child protective services system.

(b) The percentage of the target population remaining in the pilot project site is greater than that of similar families not receiving those support services required by this section.

(c) The percentage of school dropouts is less than in similar families not receiving those support services required by this section.

18998. The department shall utilize funds from the Drug Free Schools and Communities Act for the purposes of this chapter. Local government agencies may provide additional resources for the pilot projects as available.

18999. For purposes of this chapter, "support services" means substance abuse prevention services which enable residents to maintain a drug-free environment within a housing authority setting.

18999.1. This chapter 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.

CHAPTER 1001

An act to amend Sections 66412, 66468.2, and 66469 of the Government Code, relating to subdivisions.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local zoning and building ordinances, or except to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 11004 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

SEC. 2. Section 66468.2 of the Government Code is amended to read:

66468.2. The board of supervisors may, by resolution, authorize any county officer to:

(a) Perform the duties required of the clerk of the board of supervisors under this article.

(b) Approve the security for payment of taxes required pursuant to subdivision (b) of Section 66464 if that county officer also performs the other duties required of the clerk of the board of supervisors

under that subdivision.

SEC. 3. Section 66469 of the Government Code is amended to read:

66469. After a final map or parcel map is filed in the office of the county recorder, it may be amended by a certificate of correction or an amending map for any of the following purposes:

(a) To correct an error in any course or distance shown thereon.

(b) To show any course or distance that was omitted therefrom.

(c) To correct an error in the description of the real property shown on the map.

(d) To indicate monuments set after the death, disability, retirement from practice, or replacement of the engineer or surveyor charged with responsibilities for setting monuments.

(e) To show the proper location or character of any monument which has been changed in location or character originally was shown at the wrong location or incorrectly as to its character.

(f) To correct any other type of map error or omission as approved by the county surveyor or city engineer, which does not affect any property right. Such errors and omissions may include, but are not limited to, lot numbers, acreage, street names, and identification of adjacent record maps.

As used in this section, "error" does not include changes in courses or distances from which an error is not ascertainable from the data shown on the final or parcel map.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 1002

An act to amend Section 53961 of the Government Code, and to add Section 16489 to the Public Utilities Code, relating to mosquito abatement and vector control.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 53961 of the Government Code is amended to read:

53961. The governing board of a public cemetery district organized pursuant to the public cemetery district laws in Part 4

(commencing with Section 8890) of Division 8 of the Health and Safety Code or the governing board of a mosquito abatement district or a vector control district organized pursuant to Chapter 5 (commencing with Section 2200) of Division 8 of the Health and Safety Code, may by resolution provide for the establishment of a revolving fund in an amount not to exceed 110 percent of one-twelfth of the district's adopted budget for that fiscal year. This fund, which shall replace the fund authorized in Section 53952, may be used to pay any authorized expenditures of the district. The resolution which established the district revolving fund shall conform with the designations required in Section 53952.

SEC. 2. Section 16489 is added to the Public Utilities Code, to read:

16489. (a) The June Lake Public Utility District may exercise all of the powers of a mosquito abatement district or vector control district, as set forth in Chapter 5 (commencing with Section 2200) of Division 3 of the Health and Safety Code, necessary for purposes of mosquito abatement or vector control within the service area of the June Lake Public Utility District, if the governing board of the mosquito abatement or vector control district, if any, having jurisdiction over mosquito abatement or vector control in the area where the abatement or control efforts are to take place consents to the exercise of those powers by the June Lake Public Utility District.

(b) The misdemeanor provisions of Section 2292 of the Health and Safety Code, shall apply to persons who interfere with mosquito abatement and vector control work done by the June Lake Public Utility District.

SEC. 3. Due to the unique circumstances concerning the sparsely populated nature of the service area within the June Lake Public Utility District, and the severity of the potential mosquito or vector problem in that area, it is necessary that authority be given to the June Lake Public Utility District to conduct mosquito abatement and vector control as necessary to facilitate the performance of its duties as a public utility district, and 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. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 1003

An act to add Section 61100.5 to the Government Code, relating to community services districts.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 61100.5 is added to the Government Code, to read:

61100.5. (a) Notwithstanding Section 61100 and 61103, qualified voters within the Bass Lake area of Madera County may form a district pursuant to this part. The petition for formation shall be signed by at least 10 percent of the qualified voters within the proposed district. Every qualified voter, or his or her legal representative, may vote on the formation of the district and on all other matters concerning the district if formed, but shall be entitled to cast only one vote. Every qualified voter may vote either in person or by a person duly appointed as his or her proxy. The appointment of a proxy shall be as provided in Section 35005 of the Water Code. Elections shall be conducted pursuant to Article 1 (commencing with Section 35106) of Chapter 2 of Part 4 of Division 13 of the Water Code. For the purposes of this section, a qualified voter shall be (1) a voter who is a resident of the district, and (2) every owner of real property within the district who is not a resident of the district.

(b) The last equalized county assessment roll shall be conclusive evidence of ownership of the real property. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of the land shall designate in writing which one of the owners shall be deemed the owner of the land for purposes of qualifying as a voter.

(c) The legal representative of a corporation or estate owning real property may vote on behalf of the corporation or estate. Before a legal representative votes at a district election, he or she shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election. As used in this section, legal representative means an official of a corporation owning real property or a guardian, executor, or administrator of the estate of the holder of title to real property who:

(1) Is appointed under the laws of the state.

(2) Is entitled to the possession of the estate's real property.

(3) Is authorized by the appointing court to exercise the particular right, privilege, or immunity which he or she seeks to exercise.

(d) Notwithstanding Section 61200, every qualified voter shall be eligible to be a member of the board of directors of a community services district formed in the Bass Lake area of Madera County.

(e) Any community services district formed in the Bass Lake area of Madera County may exercise all the powers of a community services district pursuant to Section 61600, except for the powers in subdivisions (a), (h), (i), (*l*), (n), and (o) of Section 61600.

(f) In all other respects a community services district formed after a petition pursuant to this section shall be governed by the provisions of this part.

SEC. 2. The Legislature finds and declares that the property in the Bass Lake Area of Madera County is owned largely by nonresidents but that water and various services need to be provided and that they can best be provided through the establishment of a community services district. The Legislature further finds and declares that these facts and circumstances are not common to all areas. It is therefore declared that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution, and that the enactment of this act as a special law is necessary for the solution of problems existing in the Bass Lake area of Madera County.

CHAPTER 1004

An act to amend Section 40202 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 40202 of the Vehicle Code is amended to read:

40202. (a) If a vehicle is unattended during the time of the violation, the peace officer or person authorized to enforce parking laws and regulations shall securely attach to the vehicle a notice of parking violation setting forth the violation, including reference to the section of this code or of the local ordinance or federal statute or regulation so violated, the approximate time thereof, and the location where the violation occurred and fixing a time and place for appearance by the registered owner or the lessee or renter to answer the notice of parking violation. The notice of parking violation shall also set forth the vehicle license number and registration expiration date, the last four digits of the vehicle identification number, if that number is visible through the windshield, the color of the vehicle, and, if possible, the make of the vehicle.

(b) The notice of parking violation shall be attached to the vehicle either under the windshield wiper or in another conspicuous place upon the vehicle so as to be easily observed by the person in charge of the vehicle upon the return of that person.

(c) Once the issuing officer has prepared the notice of parking violation and has attached it to the vehicle as provided in subdivision (a), the officer shall file the notice with the processing agency. Any person, including the issuing officer and any member of the officer's department or agency, or any peace officer who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed the face of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the processing agency or with a person authorized to receive the deposit of the parking penalty, is guilty of a misdemeanor.

(d) If, after a copy of the notice of parking violation is attached to the vehicle, the issuing officer determines that, in the interest of justice, the notice of parking violation should be dismissed, the issuing agency may recommend, in writing, that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the processing agency.

(e) If the processing agency makes a finding that there are grounds for dismissal, the finding shall be entered on the record and the notice of parking violation shall be canceled pursuant to paragraph (1) of subdivision (a) of Section 40215.

(f) Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

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 1005

An act to add Section 29 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

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

(a) The epidemic of alcohol and other drug abuse among Californians constitutes a public health emergency, costing $17 billion a year.

(b) Alcoholism and other drug dependencies are a factor in a significant proportion and range of cases seen by psychotherapists.

(c) Forty percent of all family court problems involve alcoholism.

(d) The separation and divorce rate among substance abusers and their spouses is seven times greater than for the general population.

(e) Sixty percent of substance abusing families in treatment have experienced domestic violence.

(f) Substance abuse is involved in over 50 percent of spousal abuse.

(g) One out of every eight Americans are children of problem drinkers; nearly one-quarter are children under age 18.

(h) Over 50 percent of known incest victims live in homes where alcohol abuse was a major problem; 26 percent of children living in alcoholic homes have been incest victims.

(i) Parental substance abuse is associated with learning problems, hyperactivity, social aggression, increased anxiety, and low self-esteem in young children and eating disorders, truancy, delinquency, and substance abuse in adolescents.

(j) Alcohol is a factor in 20 to 37 percent of completed suicides; individuals attempting suicide are 4 to 6 times more likely than the general population to report being problem drinkers or alcoholics.

(k) Thirty-one to 70 percent of those arrested for violent crimes (homicide, physical or sexual assault) had been drinking when the crime was committed. Forty-five to 64 percent of homicide and physical assault victims had also consumed alcohol.

(*l*) The purpose of this act is to ensure that professionals of the healing arts are provided with adequate and appropriate training regarding the recognition of chemical dependency and the proper steps for early intervention.

SEC. 2. Section 29 is added to the Business and Professions Code, to read:

29. (a) The Board of Psychology and the Board of Behavioral Science Examiners shall consider adoption of continuing education requirements including training in the area of recognizing chemical

dependency and early intervention for all persons applying for renewal of a license as a psychologist, clinical social worker, or marriage, family, and child counselor.

(b) Prior to the adoption of any regulations imposing continuing education relating to alcohol and other chemical dependency, the board and committee are urged to consider coursework to include, but not necessarily be limited to, the following topics:

(1) Historical and contemporary perspectives on alcohol and other drug abuse.

(2) Extent of the alcohol and drug abuse epidemic and its effects on the individual, family, and community.

(3) Recognizing the symptoms of alcoholism and drug addiction.

(4) Making appropriate interpretations, interventions, and referrals.

(5) Recognizing and intervening with affected family members.

(6) Learning about current programs of recovery, such as 12 step programs, and how therapists can effectively utilize these programs.

The Board of Psychology and the Board of Behavioral Science Examiners shall submit a report to the Legislature on or before June 30, 1991, indicating whether regulations were adopted or are proposed imposing continuing education requirements on their respective licensees.

If the board or committee has adopted or proposed regulations, the report shall contain information as to the content of the requirement and how the requirement was developed. The board and committee are urged to consider the elements of training contained herein when adopting or proposing continuing education requirements in the areas of alcohol and chemical dependency.

If the board or committee has not adopted proposed regulations, the report shall indicate how concerns of consumer protection are to be met, for example, how the public will be assured that licensed psychotherapists have minimal, up-to-date competency in chemical dependency detection and early intervention.

CHAPTER 1006

An act to add Section 8488.5 to the Education Code, relating to child supervision programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 8488.5 is added to the Education Code, to read:

8488.5. (a) It is the intent of the Legislature to provide safe and

rewarding after-school opportunities for schoolaged children who would otherwise not be supervised. It is also the intent of the Legislature to provide college and university students with opportunities for community service that will assist them in making career choices.

(b) The Superintendent of Public Instruction shall review the child supervision programs provided for under this article and the child supervision programs offered by private entities, and shall report the results of the review to the Legislature no later than April 1, 1991. The review shall address, but need not be limited to, the number of pupils currently served in the programs, the types of programs, the areas of the state, and the legal, fiscal, and programmatic obstacles to fully serving the pupils who want to participate in the programs. The review shall also include recommendations on developing a matching formula to provide funding that would create an incentive to expand child supervision programs.

SEC. 2. The Superintendent of Public Instruction shall fund the review required pursuant to Section 8488.5 of the Education Code from federal funds that are provided to the State Department of Education in the Budget Act of 1990.

SEC. 3. The California State University and the Chancellor of the California Community Colleges each are encouraged to convene a task force to investigate and report on the potential role of students from California State University and the community colleges in child supervision programs established pursuant to Article 23 of Chapter 2 (commencing with Section 8485) of the Education Code. The California State University and the Chancellor of the California Community Colleges shall each request that the Superintendent of Public Instruction select a designee from the State Department of Education to participate on each task force to assist in the articulation among the segments of public higher education of the development of child supervision programs. Each task force shall report the results of its investigation to the Legislature no later than July 1, 1991. Each task force shall report on the following:

(a) The extent to which college and university students are currently working or volunteering in child supervision programs as part of programs sponsored by the California State University or a community college district.

(b) The feasibility and desirability of establishing campus sponsored programs and links with local school district child supervision programs.

(c) Recommendations for legislation to promote the goals expressed in subdivision (a) of Section 8488.5 of the Education Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure as soon as possible the health and safety of

schoolage children who are currently not supervised during after school hours, it is necessary that this act take effect immediately.

CHAPTER 1007

An act to add Section 41211 to the Food and Agricultural Code, relating to grapes.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990.]

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

SECTION 1. Section 41211 is added to the Food and Agricultural Code, to read:

41211. (a) The director, in consultation with the University of California and the California State University, shall conduct a study on the feasibility of establishing a public or private program, or a combination thereof, for the development of new grape-based products and their uses and for promoting and marketing these new products.

(b) The Wine Grape Inspection Advisory Committee, created pursuant to Section 41201, shall form a subcommittee, consisting of five grower members of the committee who shall each represent geographically different grape growing regions of the state, to advise the director with respect to the study described in subdivision (a).

(c) The director shall report his or her findings to the Governor, the Assembly Committee on Agriculture, and the Senate Committee on Agriculture and Water Resources, not later than January 1, 1992.

SEC. 2. The Department of Food and Agriculture shall not conduct the study described in Section 41211 of the Food and Agricultural Code unless and until the department receives a sum of not less than fifty thousand dollars ($50,000), to conduct the study, either from private industry or in grants from other sources, or in any combination thereof.

CHAPTER 1008

An act to add Section 21674.5 to the Public Utilities Code, relating to airports, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 21674.5 is added to the Public Utilities Code, to read:

21674.5. (a) The Department of Transportation shall develop and implement a program or programs to assist in the training and development of the staff of airport land use commissions, after consulting with airport land use commissions, cities, counties, and other appropriate public entities.

(b) The training and development program or programs are intended to assist the staff of airport land use commissions in addressing high priority needs, and may include, but need not be limited to, the following:

(1) The establishment of a process for the development and adoption of comprehensive land use plans.

(2) The development of criteria for determining airport land use planning boundaries.

(3) The identification of essential elements which should be included in the comprehensive plans.

(4) Appropriate criteria and procedures for reviewing proposed developments and determining whether proposed developments are compatible with the airport use.

(5) Any other organizational, operational, procedural, or technical responsibilities and functions which the department determines to be appropriate to provide to commission staff and for which it determines there is a need for staff training or development.

(c) The department may provide training and development programs for airport land use commission staff pursuant to this section by any means it deems appropriate. Those programs may be presented in any of the following ways:

(1) By offering formal courses or training programs.

(2) By sponsoring or assisting in the organization and sponsorship of conferences, seminars, or other similar events.

(3) By producing and making available written information.

(4) Any other feasible method of providing information and assisting in the training and development of airport land use commission staff.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Aeronautics Account in the State Transportation Fund to the Department of Transportation for the

purposes of this act.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assist airport land use commissions to comply with state law requiring the development and adoption of comprehensive land use plans for each public airport in California, and in order to provide for the orderly development of public airports and to provide adequate protection from incompatible land uses in the vicinity of public use airports at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1009

An act to amend Section 8684 of the Government Code, relating to disaster relief loans, and making an appropriation therefor.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 8684 of the Government Code is amended to read:

8684. (a) It is the intent of the Legislature:

(1) To provide the Governor with appropriate emergency powers in order to enable utilization of available emergency funding to provide guarantees for short-term, low-interest loans to be made by commercial lending institutions, in connection with relief provided for the northern California earthquake of October 17, 1989, and incidents subsequent thereto, and resulting therefrom, in the affected area during the period of earthquake relief, for the purpose of supplying interim financing to enable small businesses to continue operations pending receipt of federal disaster assistance.

(2) That the Governor should utilize this authority to prevent business insolvencies and loss of employment in the area affected by the northern California earthquake of October 17, 1989.

(b) In addition to the allocations authorized by Section 8683, the Governor may allocate funds made available for the purposes of this chapter, in connection with relief provided for the northern California earthquake of October 17, 1989, and incidents subsequent thereto, and resulting therefrom, in the affected area during the period of earthquake relief, to the Small Business Expansion Fund for use by the Office of Small Business, pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, to make allocations of funds to small business development corporations as follows:

(1) To provide guarantees for short-term low-interest loans to be made by commercial lending institutions for the purpose of providing interim financing to enable small businesses that have suffered actual physical damage or significant economic losses, as a result of the natural disaster for which funding under this section is made available, to continue or resume operations pending receipt of loans made or guaranteed by the federal Small Business Administration. The maximum amount of any loan guarantee funded under this section shall not exceed one hundred fifty thousand dollars ($150,000). The loan guarantee shall not exceed 95 percent of the loan amount, except that the loan guarantees may be for 100 percent of the loan amount if the applicant can demonstrate that access to business records pertinent to the loan application has been precluded by official action prohibiting necessary reentry into the affected business premises. The term of the loan shall be determined by the financial institution providing the loan or shall be made payable on the date the proceeds of a loan made or guaranteed by the federal Small Business Administration with respect to the same damage or loss are made available to the borrower, whichever first occurs. The maximum term of the loan guarantee shall be not more than 12 months except as provided in this section. Loan guarantees for which the initial 12-month term has expired and for which an application for disaster assistance funding from the federal Small Business Administration is still pending may be extended until the time that the Small Business Administration has reached a final decision on the application. Agricultural loans and loan guarantees for loans which have been denied funding by the federal Small Business Administration, may be extended by the financial institution providing the loan is for no longer than a maximum of seven years, if the business demonstrates the ability to repay the loan with an extended loan term, and a new credit analysis is provided. All loans extended under this provision shall be repaid in installments of principal and interest, and be fully amortized over the term of the loan. Nothing in this section shall preclude the lender from charging reasonable administrative fees in connection with the loan.

(2) To provide guarantees for short-term low-interest loans, as provided in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, for small farms, nurseries, and agriculture-related enterprises which have suffered actual physical damage or significant economic injury as a result of the northern California earthquake of October 17, 1989, or its subsequent aftershocks, but which are types of businesses that are ineligible for loans or loan guarantees of the federal Small Business Administration or Farmers Home Administration provided in connection with that disaster. Loan guarantees funded pursuant to this section shall not exceed one hundred fifty thousand dollars ($150,000) and shall (A) be extended only to those individuals or entities which are unable to obtain credit elsewhere, (B) are intending to continue in the same business enterprise, (C) do not

exceed 80 percent of production losses and 100 percent of structural losses, and (D) do not exceed 95 percent of the loan amount. The maximum term of the loan guarantee shall be not more than seven years. To the extent possible the terms of the loan guarantees, including requirements respecting the terms of the underlying loans, shall be consistent with loan-guarantee assistance provided to nonagricultural businesses in response to that natural disaster by the federal Small Business Administration.

(c) Allocations pursuant to this section shall, for purposes of all provisions of law, be deemed to be for extraordinary emergency or disaster response operation costs incurred by the Office of Small Business.

SEC. 2. It is the assumption of the Legislature, in enacting this act, that no applications for loan guarantees for loss due to the Loma Prieta earthquake, will be accepted by small business development corporations after September 1, 1990.

CHAPTER 1010

An act to amend Section 25244.5 of, and to add and repeal Section 25244.1101 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 18, 1990]

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

SECTION 1. Section 25244.5 of the Health and Safety Code is amended to read:

25244.5. The department shall establish a Hazardous Waste Technology, Research, Development, and Demonstration Program, which shall consist of all of the following elements:

(a) Contracting with, and providing grants to, universities, governmental agencies, and private organizations for the research and development of hazardous waste reduction, recycling, or treatment technologies pursuant to Section 25244.10.

(b) Providing grants, under specified conditions, to cities, counties, and private organizations for the commercial demonstration of hazardous waste reduction, recycling, or treatment technologies pursuant to Section 25244.6.

(c) Providing grants to local governments for the development of local hazardous waste reduction programs which provide technical assistance, including hazardous waste audits, to generators pursuant to Section 25244.1101.

SEC. 2. Section 25244.1101 is added to the Health and Safety Code, to read:

25244.1101. (a) The department shall, to the extent that

meritorious applications are received, as determined by the department, provide grants to local government hazardous waste reduction programs to assist businesses in the establishment of effective hazardous waste reduction practices. The grants shall be used for all of the following purposes:

(1) Identification of the most significant hazardous waste streams in the city or county and the businesses that produce them.

(2) Education of governmental agencies, community and industry groups, and individual businesses concerning the concepts of hazardous waste reduction, including, but not limited to, process modifications, raw material substitution, recycling, treatment options, and housekeeping methods.

(3) Dissemination of information on best demonstrated available hazardous waste reduction, recycling, and treatment technologies to businesses through workshops and educational materials.

(4) Waste stream-specific and process-specific waste reduction audits of businesses in the city or county.

(5) Other innovative methods to bring waste reduction techniques and practices to the attention of businesses in the city or county, including the use of technical consulting services for businesses of small and medium size.

(b) A grant made by the department to a local government shall not exceed fifty thousand dollars ($50,000) per year, and the total amount of grants awarded by the department each year pursuant to this section shall not exceed two hundred fifty thousand dollars ($250,000).

(c) In awarding grants to local governments pursuant to this section, the department shall give preference to local governments which offer matching funds to state grant funds.

(d) It is the intent of the Legislature that funding for the grants provided pursuant to this section shall be provided from funding for the Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration Act of 1985.

(e) This section shall become inoperative on July 1, 1994, and, as of January 1, 1995, 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.

CHAPTER 1011

An act to amend Section 11008.15 of, and to add Section 11155.5 to, the Welfare and Institutions Code, relating to juveniles, and making an appropriation therefor.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 11008.15 of the Welfare and Institutions Code is amended to read:

11008.15. Notwithstanding Sections 11008.14 and 11267, the department shall exercise the options of disregarding earned income of a dependent child derived from participation in the Job Training Partnership Act of 1982 (P.L. 97-300), a dependent child who is a full-time student pursuant to the Deficit Reduction Act of 1984 (P.L. 97-369), and a dependent child 16 years of age or older who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), providing the child's Independent Living Program case plan states that the purpose of the employment is to enable the child to gain knowledge of needed work skills, work habits, and the responsibilities of maintaining employment.

SEC. 2. Section 11155.5 is added to the Welfare and Institutions Code, to read:

11155.5. (a) In addition to the personal property permitted by other provisions of this part, a child declared a ward or dependent child of the juvenile court, who is age 16 years or older, and who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) may retain any cash savings, including interest, accumulated pursuant to the child's Independent Living Program case plan. The cash savings shall be the child's own money and shall be deposited by the child or on behalf of the child in any bank or savings and loan institution whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The cash savings shall be for the child's use for purposes directly related to emancipation pursuant to Part 2.7 (commencing with Section 60) of Division 1 of the Civil Code.

(b) The cash savings accumulated and deposited pursuant to this section shall be kept separate from other types and sources of cash savings. The withdrawal of the savings shall require the written approval of the child's probation officer or social worker and shall be directly related to the goal of emancipation.

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 1012

An act to amend Section 24007 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 24007 of the Vehicle Code is amended to read:

24007. (a) (1) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being legally wrecked or dismantled, or sold exclusively for off-highway use.

(2) Paragraph (1) does not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515.

(b) (1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(3) Paragraphs (1) and (2) do not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a

salvage certificate pursuant to Section 11515.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

CHAPTER 1013

An act to amend Section 798.17 of, and to add Section 798.41 to, the Civil Code, relating to mobilehome parks.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 798.17 of the Civil Code is amended to read:

798.17. (a) Rental agreements meeting the criteria of subdivision (b) shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent. The terms of such a rental agreement shall prevail over conflicting provisions of such an ordinance, rule, regulation, or initiative measure limiting or restricting rents in mobilehome parks only during the term of the rental agreement or one or more uninterrupted, continuous extensions thereof. If the rental agreement is not extended and no new rental agreement in excess of 12 months' duration is entered into, then the last rental rate charged for the space under the previous rental agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulation, if any.

The first paragraph of a rental agreement entered into pursuant to this section shall contain a provision notifying the homeowner that the agreement will be exempt from any ordinance, rule, regulation,

or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent.

(b) Rental agreements subject to this section shall meet all of the following criteria:

(1) The rental agreement shall be in excess of 12 months' duration.

(2) The rental agreement shall be entered into between the management and a homeowner for the personal and actual residence of the homeowner.

(3) The homeowner shall have at least 30 days from the date the rental ageement is first offered to the homeowner to accept or reject the agreement.

(4) The homeowner who executes a rental agreement offered pursuant to this section may void such agreement by notifying management in writing within 72 hours of the homeowner's execution of the rental agreement.

(c) The homeowner shall have the option to reject the offered rental ageement and instead accept a rental agreement for a term of 12 months or less from the date the offered agreement begins. In the event the homeowner elects to have a rental ageement for a term of 12 months or less, including a month-to-month agreement, the agreement shall contain the same "rental charges" terms and conditions as the offered rental agreement during the first 12 months, except for options contained in the offered rental agreement to extend or renew the agreement.

(d) Nothing in subdivision (c) shall be construed to prohibit the management from offering gifts of value, other than rental rate reductions, to homeowners who execute a rental agreement pursuant to this section.

(e) With respect to any space in a mobilehome park which is exempt under subdivision (a) from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the mobilehome park shall be exempt from any fee or other exaction imposed pursuant to such an ordinance, rule, regulation, or initiative measure or imposed for the purpose of defraying the cost of administration thereof.

(f) This section does not apply to or supersede other provisions of this part or other state law.

SEC. 1.5. Section 798.17 of the Civil Code is amended to read:

798.17. (a) Rental agreements meeting the criteria of subdivision (b) shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent. The terms of such a rental agreement shall prevail over conflicting provisions of such an ordinance, rule, regulation, or initiative measure limiting or restricting rents in mobilehome parks only during the term of the rental agreement or one or more

uninterrupted, continuous extensions thereof. If the rental agreement is not extended and no new rental agreement in excess of 12 months' duration is entered into, then the last rental rate charged for the space under the previous rental agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulation, if any.

In the first sentence of the first paragraph on the first page of a rental agreement entered into pursuant to this section, there shall be set forth a provision in at least 12-point boldface type if the agreement is printed, or in capital letters if the agreement is typed, giving notice that the agreement will be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent.

(b) Rental agreements subject to subdivision (a) shall, except as provided in subdivision (e), meet all of the following criteria:

(1) The rental agreement shall be in excess of 12 months' duration.

(2) The rental agreement shall be entered into between the management and a homeowner for the personal and actual residence of the homeowner.

(3) The homeowner shall have at least 30 days from the date the rental ageement is first offered to the homeowner to accept or reject the agreement.

(4) A homeowner who executes a rental agreement pursuant to this section may rescind the agreement by notifying the management in writing within 72 hours of the homeowner's execution of the rental agreement.

(c) If pursuant to subdivision (b) the homeowner rejects the offered rental agreement or rescinds a signed rental agreement, the homeowner shall be entitled to instead accept, pursuant to Section 798.18, a rental agreement for a term of 12 months or less from the date the offered agreement was to begin. In the event the homeowner elects to have a rental ageement for a term of 12 months or less, including a month-to-month tenancy, the rental agreement shall provide the same rental charges, terms, and conditions as a rental agreement offered pursuant to subdivision (b), during the first 12 months, except for options, if any, contained in the offered rental agreement to extend or renew the agreement.

(d) Nothing in subdivision (c) or (e) shall be construed to prohibit the management from offering gifts of value, other than rental rate reductions, to homeowners or prospective homeowners who execute a rental agreement subject to subdivision (a).

(e) If a new rental agreement subject to subdivision (a) is offered to a prospective homeowner, including a purchaser of a mobilehome already located in a park, the prospective homeowner shall have at least 10 working days from the date the rental agreement is first offered to accept or reject the agreement. The prospective homeowner shall have the right to rescind the rental agreement

after signing it by notifying the management in writing within 72 hours of the execution of the rental agreement. If the prospective homeowner rejects the offered rental agreement or rescinds a signed agreement, nothing in this section shall be deemed to entitle the prospective homeowner to instead accept a rental agreement pursuant to Section 798.18. The execution of an offered rental agreement and its subsequent rescission shall not be deemed to create any rights of tenancy on behalf of the prospective homeowner in the mobilehome park.

(f) Any rental agreement subject to subdivision (a) which is first entered into on or after January 1, 1991, shall be subject to the following conditions:

(1) No extension of the rental agreement beyond the initial stated term shall be renewable at the sole option of either the park management or the homeowner. The initial stated term of the rental agreement shall not exceed five years, unless (A) the rental agreement was voluntarily entered into by the homeowner and was not a mandatory requirement or prerequisite to tenancy or (B) Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code is applicable to the tenancy established by the rental agreement and there has been compliance with the applicable requirements of those provisions.

(2) A provision of a rental agreement requiring assignment of the rental agreement to a purchaser or transferee is void and unenforceable, except as follows:

(A) A rental agreement may contain such a provision if (i) the rental agreement was voluntarily entered into by the homeowner and was not a mandatory requirement or prerequisite to tenancy or (ii) Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code is applicable to the tenancy established by the rental agreement and there has been compliance with the applicable requirements of those provisions.

(B) A rental agreement which requires the assumption thereof by a purchaser or transferee of a mobilehome in a park during the initial term of the rental agreement, not to exceed five years, shall be enforceable for that term, and the purchaser or transferee for that term shall not be entitled to terminate the rental agreement pursuant to Section 798.59.

This subdivision does not apply to rental agreements first entered into before January 1, 1991, regardless of whether the rental agreement has been assigned one or more times to purchasers or transferees of the homeowner who originally entered into that rental agreement and his or her successors in interest.

(g) With respect to any space in a mobilehome park which is exempt under subdivision (a) from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the mobilehome park shall be exempt from any fee or other exaction imposed pursuant to such an ordinance, rule, regulation, or

initiative measure or imposed for the purpose of defraying the cost of administration thereof.

(h) This section does not apply to or supersede other provisions of this part or other state law.

SEC. 2. Section 798.41 is added to the Civil Code, to read:

798.41. (a) Where a rental agreement, including a rental agreement specified in Section 798.17, does not specifically provide otherwise, the park management may elect to bill a homeowner separately for utility service fees and charges assessed by the utility for services provided to or for spaces in the park. Any separately billed utility fees and charges shall not be deemed to be included in the rent charged for those spaces under the rental agreement, and shall not be deemed to be rent or a rent increase for purposes of any ordinance, rule, regulation, or initiative measure adopted or enforced by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent, provided that at the time of the initial separate billing of any utility fees and charges the rent chargeable under the rental agreement or the base rent chargeable under the terms of a local rent control provision is simultaneously reduced by an amount equal to the fees and charges separately billed.

Utility services to which this section applies are natural gas or liquid propane gas, electricity, water, cable television, garbage or refuse service, and sewer service.

(b) This section does not apply to rental agreements entered into prior to January 1, 1991, until extended or renewed on or after that date.

(c) Nothing in this section shall require rental agreements to provide for separate billing to homeowners of fees and charges specified in subdivision (a).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 798.17 of the Civil Code proposed by both this bill and SB 2009. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 798.17 of the Civil Code, and (3) this bill is enacted after SB 2009, in which case Section 1 of this bill shall not become operative.

CHAPTER 1014

An act to amend Sections 561, 5379, and 99304 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 561 of the Public Utilities Code is amended to read:

561. (a) Every railroad corporation, passenger stage corporation, passenger air carrier, and street railroad corporation providing departures originating in this state shall prohibit the smoking of any tobacco product in the passenger seating area of every passenger car, passenger stage, aircraft, or other vehicle.

(b) Every such corporation and carrier shall display in the passenger seating area of every passenger car, passenger stage, aircraft, or other vehicle, notices sufficient in number, posted in such locations as to be readily seen by boarding passengers, advising passengers of the no smoking requirements pursuant to subdivision (a). Words on such notices which state "No Smoking" or an equivalent phrase shall be at least three-quarters of one inch high, and any other explanatory words on the notices shall be at least one-quarter of an inch high.

(c) No person shall smoke any tobacco product in a space known by him or her to be designated for nonsmoking passengers. A violation of this subdivision is not a crime.

(d) As used in this section, "passenger air carrier" shall have the same meaning as provided in Sections 2741 and 2743.

SEC. 2. Section 5379 of the Public Utilities Code is amended to read:

5379. After the cancellation or revocation of a permit or certificate, or during the period of its suspension, or after the expiration of its permit or certificate, it is unlawful for a charter-party carrier of passengers to conduct any operations as a carrier. The commission may either grant or deny an application for a new permit or certificate whenever it appears that a prior permit or certificate of the applicant has been canceled or revoked pursuant to Section 5378 or whenever it appears, after hearing, that as a prior permit or certificate holder, the applicant engaged in any of the unlawful activities set forth in Section 5378 for which his or her permit or certificate might have been canceled or revoked.

SEC. 3. Section 99304 of the Public Utilities Code is amended to read:

99304. Notwithstanding Section 29530 of the Government Code, the Metropolitan Transportation Commission shall, if 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, and shall include the set-aside interest in the amount apportioned to that operator. 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. 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.

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

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 1015

An act to amend Sections 7500.1, 7504, 7504.3, 7505.5, 7506, 7506.3, 7506.7, 7506.9, 7506.10, 7507.7, 7507.9, 7507.10, 7508.2, 7508.6, and 7511 of, and to add Section 7502.6 to, the Business and Professions Code, relating to repossessors, and making an appropriation therefor.

[Approved by Governor September 17, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 7500.1 of the Business and Professions Code is amended to read:

7500.1. The following terms as used in this chapter have the meaning expressed in this section.

(a) "Person" includes any individual, partnership, or corporation.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

(d) "Bureau" means the Bureau of Collection and Investigative Services.

(e) "Chief" means the Chief of the Bureau of Collection and Investigative Services.

(f) "Licensee" means an individual, partnership, or corporation licensed under this chapter as a repossession agency.

(g) "Qualified certificate holder" or "qualified manager" is a person who possesses a valid qualification certificate in accordance with the provisions of Article 5 (commencing with Section 7504) and is in active control or management of, and who is a director of, the licensee's place of business.

(h) "Employee" means a person registered under this chapter.

(i) "Services" means any duty or labor to be rendered by one person for another.

(j) "Dangerous drugs" means any controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(k) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(*l*) "Combustibles" means any substance or article that is capable of undergoing combustion or catching fire, or that is flammable, if retained.

(m) "Health hazard" means any personal effects which if retained would produce an unsanitary or unhealthful condition.

(n) "Advertisement" means any written or printed communication, including a directory listing, except a free telephone directory listing which does not allow space for a license number.

(o) "Assignment" means an authorization by the legal owner, lienholder, lessor, or lessee to recover, or to collect money payment in lieu of recovery of, personal property, including, but not limited to, personal property registered under the Vehicle Code which has been sold under a security agreement that contains a repossession clause. "Assignment" also means an authorization by the registered owner to recover personal property registered under the Vehicle Code where an employer-employee relationship exists or existed between the registered owner and the possessor of the property and the possessor is wrongfully in possession of the property.

(p) "Security agreement" means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation.

(q) "Legal owner" means a person holding a security interest in personal property which has been sold, leased, or rented under a security agreement.

(r) "Private building" means and includes any dwelling, outbuilding, or other enclosed structure.

(s) "Secured area" means and includes any fenced and locked area.

(t) "Violent act" means any act which results in bodily harm or injury to any party involved.

(u) "Personal property" means any vehicle, boat, recreational vehicle, motor home, appliance, or other property which has been sold under a security agreement.

(v) "Personal effects" means any property contained within repossessed personal property which is not the property of the legal owner.

SEC. 1.5. Section 7502.6 is added to the Business and Professions Code, to read:

7502.6. (a) The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a repossession agency without first having obtained a license pursuant to this chapter, or carries on that business after the revocation or expiration of any license or during the period of suspension of any license, may, on application of the director, or any person licensed under this act or association representing those licensees or any member of the general public, issue an injunction or other appropriate order restraining that conduct and may impose civil fines not exceeding ten thousand dollars ($10,000).

(b) A proceeding to impose the fine specified in subdivision (a) and enjoin the unlicensed operation of a repossession agency business may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, for the jurisdiction in which the unlicensed activity has occurred. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Investigator Fund.

(c) The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that there shall be no requirement to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

SEC. 2. Section 7504 of the Business and Professions Code is amended to read:

7504. Except as otherwise provided in this chapter, an applicant for a qualification certificate shall comply with all of the following:

(a) Be at least 18 years of age.

(b) Have been, for at least two years of lawful experience, during

the five years preceding the date on which his or her application is filed, an employee of a licensed repossession agency within this state or have had two years lawful experience in recovering personal property sold under a security agreement within this state. Lawful experience shall mean experience in recovering personal property sold under a security agreement as a registrant pursuant to this chapter or as a salaried employee of a financial institution or vehicle dealer.

Two years' experience shall consist of not less than 4,000 hours of actual compensated work performed by the applicant preceding the filing of an application.

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

(c) Complete and forward to the bureau a qualified certificate holder application which shall be on a form prescribed by the director. The application shall be accompanied by two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his or her fingerprints.

(d) Pass the examination required.

(e) Pay the required application and examination fees to the bureau.

The amendments made to this section during the 1990 portion of the 1989–90 Regular Session shall only apply to applications filed on or after January 1, 1992.

SEC. 3. Section 7504.3 of the Business and Professions Code is amended to read:

7504.3. In order to be eligible for an initial examination, an applicant shall have completed and filed his or her application together with the application fee prescribed by this chapter in the office of the bureau in Sacramento, California, not later than 30 days prior to the next scheduled examination date. Applicants whose applications are not completed and filed within the time limits of this section may, at the discretion of the bureau, be scheduled for the first examination next following the scheduled examination.

SEC. 4. Section 7505.5 of the Business and Professions Code is amended to read:

7505.5. The person deemed to be actively in charge of an office shall be the holder of a qualification certificate and the certificate, together with the current renewal certificate, shall be prominently displayed below the repossession agency's license. The person shall spend over 51 percent of the usual business hours in the conduct of the business at the licensed location. The person shall share equally with the licensee the responsibility for the conduct of the business

and the personnel of the licensed agency. This section shall not apply to any licensee who notifies the bureau in writing that the licensee is not conducting any business, but wishes to maintain a current license status with the bureau. When the licensee resumes conducting business, the licensee shall so inform the bureau in writing within 30 days.

SEC. 5. Section 7506 of the Business and Professions Code is amended to read:

7506. As used in this article:

(a) "Licensee" means a repossession agency licensed under this chapter.

(b) "Multiple licensee" means a repossession agency holding more than one repossession license under this chapter, with one fictitious trade style and ownership, conducting repossession business from additional licensed locations other than the location shown on the original license.

SEC. 6. Section 7506.3 of the Business and Professions Code is amended to read:

7506.3. Except as otherwise provided in this article, every person entering the employ of a licensee or multiple licensee after the effective date of this article shall immediately complete an application for an initial registration or a reregistration and shall file the appropriate application with the chief within 15 working days after the commencement of employment for the licensee or multiple licensee for whom the applicant is employed. Applicants for registration must be at least 18 years of age.

(a) An initial registration application shall be required of those persons who have not previously submitted an application for, or been registered as, a repossessor employee.

(b) A reregistration application shall be required of those persons who have previously submitted or been registered as a repossessor employee.

(c) No registered employee of a multiple licensee shall be required to file more than one application for registration or reregistration for each multiple licensee.

SEC. 7. Section 7506.7 of the Business and Professions Code is amended to read:

7506.7. Employees of a licensee who are engaged exclusively in stenographic, typing, filing, clerical, in-office skiptracing, or other activities, which do not constitute the work of a repossessor as described in Section 7500.2, are not required to register under this article.

SEC. 8. Section 7506.9 of the Business and Professions Code is amended to read:

7506.9. (a) Upon the issuance of the initial registration or reregistration, the chief shall issue to the registered employee a suitable pocket identification card. The card shall contain the name of the licensee with whom the registrant is employed.

(b) Until the registration certificate is issued or denied, an

employee may be assigned to work with a temporary registration which has been embossed by the bureau with the state seal for a period not to exceed 90 days from the date employment commenced.

(c) Until the registration certificate is issued or denied, an employee who was a registrant of the licensed agency within the past 30 days may return to the agency and be assigned to work with a temporary registration which has been issued by the qualified certificate holder for a period not to exceed 30 days, provided the employee signs a declaration under penalty of perjury that he or she has not been convicted of a felony or any other act constituting grounds for denial of a registration pursuant to Section 7506.8 and that he or she has read and understands the provisions of this chapter.

(d) No employee of a licensee shall perform the duties of a repossessor employee for a licensee unless the employee has in his or her possession a valid repossessor employee registration card or evidence of a valid temporary registration as described in subdivision (b) or (c).

SEC. 9. Section 7506.10 of the Business and Professions Code is amended to read:

7506.10. (a) Every registration which expires on or after January 1, 1985, shall be placed on a cyclical renewal and shall expire one year following the date of issuance or assigned renewal date. In order to implement such cyclical renewal, the population of registrants shall be divided into 12 equal groups, the licenses of those in each group to expire on the last day of each successive month.

Notwithstanding any other provision of law, the bureau shall have authority to extend or shorten the first term of licensure following January 1, 1985, and to prorate the required license fee in order to implement this cyclical renewal.

(b) All registrations issued on or before the effective date of this section shall expire on December 31, 1984, and every year thereafter, unless renewed as provided in this section, except for those registrations issued on or after January 1, 1984, which shall expire on December 31, 1985, and every year thereafter, unless renewed as provided in this section.

(c) At least 60 days prior to the expiration, a registrant who desires to renew his or her registration shall forward to the bureau for each registration a renewal form obtained from his or her employer or the bureau, with the renewal fee prescribed by this chapter, for renewal of his or her registration.

(d) A licensee shall provide to his or her employees information regarding procedures for renewal of registration.

(e) A registration that is not renewed within one year after its expiration may not be renewed. The renewal fee for a renewal after expiration shall be the same as a renewal fee and any applicable penalties. Registrants working with expired registrations shall pay all accrued fees and penalties prior to renewal or reregistration.

(f) Upon renewal, evidence of renewal, as the director may

prescribe, shall be issued to the registrant. If evidence of renewal has not been delivered to the registrant prior to the date of expiration, the registrant may present evidence of renewal to substantiate continued registration for a period not to exceed 60 days after the date of expiration.

(g) A registration shall not be renewed until any and all fines assessed pursuant to this chapter and not resolved in accordance with this chapter have been paid.

SEC. 10. Section 7507.7 of the Business and Professions Code is amended to read:

7507.7. Within seven days after receiving a final civil court judgment filed against the licensee or any officer, partner, qualified certificate holder, or employee of a licensee, for an amount of more than the then prevailing maximum claim that may be brought in a small claims court pertaining to an act done within the course and scope of his or her employment, the licensee, or his or her qualified certificate holder, or his or her employee, shall mail or deliver to the chief a copy of the judgment.

SEC. 11. Section 7507.9 of the Business and Professions Code is amended to read:

7507.9. If personal effects or other personal property, not covered by a security agreement, are contained in or on personal property at the time it is recovered, the effects shall be removed from the property subject to the security interest, a complete and accurate inventory shall be made, and the personal effects shall be stored in a labeled container by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the registered owner at the time the personal property was being repossessed.

(a) The date and time the inventory is made shall be indicated and shall be signed by the repossession agency employee who performs the inventory.

(b) The following items of personal effects are items determined to present a danger or health hazard when recovered by the licensee and shall be disposed of in the following manner:

(1) Deadly weapons and dangerous drugs shall be turned over to a local law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date and the time and the place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency.

(2) Combustibles shall be inventoried and noted as "disposed of, dangerous combustible," and the item shall be disposed of in a reasonable and safe manner.

(3) Food and other health hazard items shall be inventoried and noted as "disposed of, health hazard," and disposed of in a reasonable and safe manner.

(c) Personal effects may be disposed of after being held for at least

60 days. The inventory, and adequate information as to how, when, and to whom the personal effects were disposed of, shall be filed in the permanent records of the licensee.

(d) The inventory shall include the name, address, business hours, and phone number of the person at the repossession agency to contact for recovering the personal effects and an itemization of all personal effect storage charges that will be made by the repossession agency. The inventory shall also include the following statement: "Please be advised that the property listed on this inventory will be disposed of by the repossession agency after being held for 60 days from the date of this notice IF UNCLAIMED."

(e) The inventory shall be provided to a consumer not later than 48 hours after the recovery of personal property, except that if:

(1) The 48-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 72 hours after the recovery of personal property.

(2) The 48-hour period encompasses a Saturday or Sunday and a postal holiday, the inventory shall be provided no later than 96 hours after the recovery of personal property.

(3) Inventory resulting from repossession of a yacht, motor home, or travel trailer is such that it shall take at least four hours to inventory, then the inventory shall be provided no later than 96 hours after the recovery of personal property. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of personal property.

(f) The notice may be given by regular mail addressed to the last known address of the consumer or by personal service at the option of the repossession agency.

SEC. 12. Section 7507.10 of the Business and Professions Code is amended to read:

7507.10. Each licensee shall serve a consumer with a notice of seizure as soon as possible after the recovery of personal property not later than 48 hours, except that if the 48-hour period encompasses a Saturday, Sunday, or postal holiday, the notice of seizure shall be provided not later than 72 hours or, if the 48-hour period encompasses a Saturday or Sunday and a postal holiday, the notice of seizure shall be provided not later than 96 hours after the repossession of personal property, which notice shall include all of the following:

(a) The name, address, and phone number of the representative of the legal owner to be contacted regarding the repossession.

(b) The name, address, and phone number of the representative of the repossession agency to be contacted regarding the repossession.

(c) A statement printed on the notice containing the following: "Repossessors are regulated by the Bureau of Collection and Investigative Services, 1920 20th Street, Sacramento, CA 95814. Repossessors are required to provide you, not later than 48 hours

after the recovery of personal property, with an inventory of personal effects or personal property recovered during repossession unless the 48-hour period encompasses a Saturday, Sunday, or a postal holiday, then the inventory shall be provided no later than 96 hours after the recovery of personal property."

(d) A disclosure that "Damage to a vehicle during or subsequent to a repossession and only while the vehicle is in possession of the repossession agency and is caused by the repossession agency is the liability of the repossession agency."

The notice may be given by regular mail addressed to the last known address of the consumer or by personal service at the option of the repossession agency.

SEC. 13. Section 7508.2 of the Business and Professions Code is amended to read:

7508.2. The director may assess administrative fines for any of the following prohibited acts:

(a) Recovering personal property or making any money demand in lieu thereof, including, but not limited to, personal property registered under the Vehicle Code, which has been sold under a security agreement before a signed or telegraphic authorization has been received from the legal owner, lienholder, or lessor of the personal property. A telephonic assignment is acceptable if the legal owner, lienholder, or lessor is known to the licensee and a written authorization from the legal owner, lienholder, or lessor is received by the licensee within 10 working days or a request by the licensee for a written authorization from the legal owner, lienholder, or lessor is made in writing within 10 working days. Referrals of assignments from one licensee to another licensee with confirmation to the legal owner, lienholder, or lessor informing the legal owner, lienholder, or lessor of the name, address, and license number of the licensee to whom the referral was made are acceptable. The referral of an assignment shall be made under the same terms and conditions as in the original assignment. The fine shall be twenty-five dollars ($25) for each of the first five violations and one hundred dollars ($100) for each violation thereafter, per audit.

(b) Using personal property or personal effects, which have been recovered, for the personal benefit of a licensee, or officer, partner, manager, or employee of a licensee. The fine shall be twenty-five dollars ($25) for the first violation and one hundred dollars ($100) for each violation thereafter. This subdivision does not apply to personal effects disposed of pursuant to subdivision (c) of Section 7507.9.

(c) Selling personal property recovered under the provisions of this chapter, except with written authorization from the legal owner or mortgagee thereof. The fine shall be one hundred dollars ($100) for the first violation and five hundred dollars ($500) for each violation thereafter, per audit.

(d) Failing to remit all money due clients within 10 working days after finalization of the sale of personal property. The licensee shall deposit all money received in the form of cash or negotiable

instruments made payable to the licensee for money due clients from the sale of personal property which has been repossessed in a trust account within five working days, and the money shall be withdrawn only for remittance to the client and for the payment of amounts due the licensee. The fine shall be two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each violation thereafter. For purposes of this subdivision, "finalization of sale" means the time when the documents of title or ownership which permit transfer of title from the legal owner to the purchaser are received by the repossession agency.

(e) Failing to remit moneys collected in lieu of repossession or redemption to a client within 10 working days after receipt of the moneys. The fine shall be two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each violation thereafter.

(f) Failing to deliver to a client any negotiable instrument received by the licensee made payable to the client within 10 working days of receipt of the negotiable instrument. No licensee, manager, or employee of a licensee shall accept a negotiable instrument made payable to a client unless they have authorization from the client to accept such a negotiable instrument. The fine shall be two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each violation thereafter.

(g) Unlawfully entering any private building or secured area without the consent of the owner, or of the person in legal possession thereof, at the time of repossession. The fine shall be five hundred dollars ($500) for each violation.

(h) Committing unlawful assault or battery on another person. The fine shall be five hundred dollars ($500) for each violation.

(i) Falsification or alteration of an inventory. The fine shall be twenty-five dollars ($25) for each violation.

(j) Soliciting from the legal owner the recovery of specific personal property registered under the Vehicle Code or under the motor vehicle licensing laws of other states after the property has been seen or located on a public street or on public or private property without divulging the location of the vehicle. The fine shall be one hundred dollars ($100) for the first violation and two hundred fifty dollars ($250) for each violation thereafter.

SEC. 14. Section 7508.6 of the Business and Professions Code is amended to read:

7508.6. The director may assess administrative fines against any repossession agency licensee, qualified certificate holder, or registrant for failure to notify the bureau within 30 days of any change of residence or business address. The fine shall be twenty-five dollars ($25) for each violation.

SEC. 15. Section 7511 of the Business and Professions Code is amended to read:

7511. The fees prescribed by this chapter are as follows:

(a) The application fee for an original repossession agency license

is seven hundred fifty dollars ($750).

(b) The application fee for an original qualification certificate is two hundred fifty dollars ($250).

(c) The renewal fee for a repossession agency license is four hundred fifty dollars ($450) annually.

(d) The renewal fee for a license as a qualified certificate holder is two hundred dollars ($200) annually.

(e) Notwithstanding Section 163.5, the reinstatement fee for a repossession agency license required pursuant to Sections 7503.11 and 7505.3 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(f) Notwithstanding Section 163.5, the reinstatement fee for a license as a qualified certificate holder required pursuant to Sections 7504.7 and 7503.11 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) The fee for reexamination of an applicant or the applicant's qualified certificate holder is ten dollars ($10).

(h) An initial repossessor employee registration fee is fifty dollars ($50), a repossessor employee reregistration fee is twenty-five dollars ($25), and a repossessor employee annual renewal fee is twenty-five dollars ($25) per registration. Notwithstanding Section 163.5 and this subdivision, the reregistration fee for a repossessor employee whose registration expired more than one year prior to the filing of the application for reregistration shall be fifty dollars ($50).

(i) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(j) The director shall furnish one copy of any issue or edition of the licensing law and rules and regulations to any applicant or licensee without charge. The director shall charge and collect a fee of three dollars ($3) plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person.

All fees, except any sales tax, received pursuant to this chapter shall be deposited in the Private Investigator Fund.

CHAPTER 1016

An act to amend Section 5012.5 of the Education Code, and to amend Sections 22840.5 and 23521.5 of the Elections Code, relating to elections.

[Approved by Governor September 17, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 5012.5 of the Education Code is amended to read:

5012.5. (a) Notwithstanding Section 5012, if a declaration of candidacy for an incumbent member of a school district or community college district governing board or of a county board of education is not filed by 5 p.m. on the 88th day before the election, any person, other than the person who was the incumbent on the 88th day, shall have until 5 p.m. on the 83rd day before an election to file a declaration of candidacy for the elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 5012, a candidate whose declaration of candidacy has been filed for any school district or community college district governing board election or county board of education election may withdraw as a candidate until 5 p.m. on the 83rd day before the election.

SEC. 2. Section 22840.5 of the Elections Code is amended to read:

22840.5. (a) Notwithstanding Sections 22836 and 22840, if nomination papers for an incumbent officer of the city are not filed by 5 p.m. on the 68th day before the election, the voters shall have until 5 p.m. on the 63rd day before the election to nominate candidates, other than the person who was the incumbent on the 68th day, for that incumbent's elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 22840, a candidate may withdraw his or her nomination paper until 5 p.m. on the 63rd day before the election.

SEC. 3. Section 23521.5 of the Elections Code is amended to read:

23521.5. (a) Notwithstanding any other provision of law, in any district or agency election, if a declaration of candidacy for an incumbent elective officer of a district is not filed by 5 p.m. on the 88th day before the general district election, any person other than the person who was the incumbent on the 88th day shall have until 5 p.m. on the 83rd day before the election to file a declaration of candidacy for the elective office.

(b) This section is not applicable where there is no incumbent to be elected. If this section is applicable, notwithstanding Section 23512, a candidate may withdraw his or her declaration of candidacy until 5 p.m. on the 83rd day before the general election.

CHAPTER 1017

An act to amend Section 5631 of, and to add Sections 5506.8, 5538.8, and 5539.8 to, the Public Resources Code, relating to parks and recreation.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 5506.8 is added to the Public Resources Code, to read:

5506.8. (a) Proceedings for the formation of a regional park and open-space or regional open-space district in San Bernardino County may be initiated by resolution of the Board of Supervisors of the County of San Bernardino adopted after a hearing noticed in accordance with Section 6062a of the Government Code, in lieu of the petition and related proceedings specified in this article.

(b) The resolution shall do all of the following:

(1) Name the regional district and state the reasons for forming it.

(2) Specify that the board of supervisors shall act, ex officio, as the governing body of the regional district. The provisions of this article pertaining to district directors do not apply, and all powers and authority of the regional district shall be vested in the board of supervisors in its capacity as the governing body of the regional district.

(3) Describe the territory to be included in the proposed regional district. Notwithstanding Section 5502, the territory of the regional district need not be contiguous, need not include any city in the county, and need not consist of all unincorporated areas of San Bernardino County. No city or recreation and park district shall be included in the regional district unless requested by resolution of the governing body of the city or recreation and park district desiring to be included in the regional district.

(4) Describe the methods by which the district will be financed.

(5) Call and give notice of an election to be held in the proposed regional district for the purpose of determining whether the proposed regional district shall be created and established. As used in this subdivision, "proposed regional district" includes the territory of any city or recreation and park district whose requesting resolution was adopted before the date of the hearing required by subdivision (a). Any city or recreation and park district that adopted a requesting resolution shall become a part of the regional district if a majority of the electors of the proposed regional district vote in favor of creating and establishing the regional district.

SEC. 2. Section 5538.8 is added to the Public Resources Code, to read:

5538.8. If a regional district is created and established in San Bernardino County, the regional district may contract with the County of San Bernardino to furnish its officers and employees to discharge the authority and responsibility specified in this article.

SEC. 3. Section 5539.8 is added to the Public Resources Code, to read:

5539.8. (a) In addition to the authority conferred in Section 5539.5, all provisions of the Landscaping and Lighting Act of 1972 (Division 15 (commencing with Section 22500) of the Streets and Highways Code) are applicable to a regional district if created and established in San Bernardino County. Whenever the public interest or convenience requires, the regional district may, at the discretion of its governing body, use any or all provisions of that act to carry out any purpose of the regional district.

(b) Notwithstanding any provision of the acts specified in Section 5539.5 and in this section, no assessment shall be levied on real property in a regional district created and established in San Bernardino County unless and until it is approved by a majority of the electors of the regional district. An election called for this purpose may be consolidated with the election for the creation and establishment of the regional district.

(c) The particular amount of the proposed assessment, or a range within which the governing body may fix the amount of the assessment and thereafter revise it during a specified period of time, and whether zones shall be established in the regional district for the purpose of having different assessment amounts, shall be specified in the measure submitted to the electors pursuant to subdivision (b). The governing body may exempt from the assessment any uninhabited parcel substantially used in agriculture and any parcel enforceably restricted as open-space land during the time in which the parcel is so used or restricted. In addition, the measure shall contain a provision obligating the regional district, if created and established, to issue, upon the request of any person paying the assessment, an annual pass or coupon entitling that person to the free use, or use on a reduced fee basis, of regional district lands and facilities, of a value not to exceed the amount of the assessment that is allocated to regional district facilities and lands and all phases of regional district operations and programs conducted on regional district lands. The pass or coupon shall not apply to special events at regional district facilities or lands and any charges payable to a concessionaire or private person or entity authorized to use regional district facilities or lands.

(d) The Legislature hereby finds and declares that the land acquisition, improvements, and services provided by the regional district, if created and established, will specially benefit the properties assessed and the persons paying the assessments authorized in this section in at least the following respects:

(1) Enhanced recreational opportunities and expanded access to recreational facilities.

(2) Protection of views, scenery, wildlife, and other resource values enjoyed by residents of the regional district.

(3) Protection of historical and cultural assets of the region.

(4) Increased economic activity and expanded employment opportunities within the regional district.

(5) Reduced costs of local government in areas of law enforcement, fire prevention, natural disaster response, and public health care.

(6) Enhancement of the productivity of some lands and buffering of other lands from incompatible uses.

(7) Increased property values, resulting from the effects specified in this subdivision.

SEC. 4. Section 5631 of the Public Resources Code is amended to read:

5631. The department, in cooperation with the federal government, local public agencies, and appropriate representatives of industry, may, from time to time as needed, coordinate and conduct a statewide needs analysis in relation to the purposes of this chapter. That analysis shall include a full review of the grant program authorized pursuant to this chapter. The department shall report its findings and recommendations from any analysis, including recommendations as to funding levels and sources in connection with the grant program, to the Legislature.

SEC. 5. The Legislature finds and declares that a special act is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the following circumstances:

There are unique problems involved in meeting the recreational needs of the people of the County of San Bernardino, taking into consideration such factors as the county's topography, natural resources, population density, and the proximity of urban centers of large and expanding population to open-space lands and other lands of high recreational value. Therefore, the enactment of Sections 5506.8, 5538.8, and 5539.8 of the Public Resources Code as a special law is necessary.

CHAPTER 1018

An act to amend Sections 1110 and 1300 of the Corporations Code, relating to corporations.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 1110 of the Corporations Code is amended to read:

1110. (a) If a domestic corporation owns all the outstanding shares, or owns less than all the outstanding shares but at least 90 percent of the outstanding shares of each class, of a corporation or corporations, domestic or foreign, the merger of the subsidiary corporation or corporations into the parent corporation or the merger into the subsidiary corporation of the parent corporation and any other subsidiary corporation or corporations, may be effected by a resolution or plan of merger adopted and approved by the board of the parent corporation and the filing of a certificate of ownership as provided in subdivision (e). The resolution or plan of merger shall provide for the merger and shall provide that the surviving corporation assumes all the liabilities of each disappearing corporation and shall include any other provisions required by this section.

(b) If the parent corporation owns less than all the outstanding shares but at least 90 percent of the outstanding shares of each class of the subsidiary corporation that is a party to the merger, the resolution or plan of merger also shall set forth the securities, cash, property, or rights to be issued, paid, delivered, or granted upon surrender of each outstanding share of the subsidiary corporation not owned by the parent corporation and the entire resolution or plan of merger as well as the consideration to be received for each share of the subsidiary corporation not owned by the parent corporation, shall be approved by the board of that subsidiary corporation.

(c) If the parent corporation is to be merged into one of its subsidiary corporations, the resolution or plan of merger also shall provide for the pro rata conversion of the outstanding shares of the parent corporation into shares of the surviving subsidiary corporation. In this case, the entire resolution or plan of merger shall be approved by the board of the surviving subsidiary corporation and, if the merger, but for the operation of this section, would be a merger reorganization (Section 181) the principal terms of which would be required to be approved by the outstanding shares (Section 152) of any class of the parent corporation pursuant to subdivision (d) of Section 1201, the principal terms of the resolution or plan of merger shall be approved by the outstanding shares (Section 152) of that same class of the parent corporation.

(d) In any merger pursuant to this section, the resolution or plan of merger may provide for the amendment of the articles of the surviving corporation to change its name, subject to Section 201, regardless of whether the name so adopted is the same as or similar to that of one of the disappearing corporations. The provision shall establish the wording of the amendment pursuant to paragraph (2) of subdivision (a) of Section 907 and the resolution or plan of merger shall not provide for the amendment of the articles of the surviving corporation other than to change its name.

(e) After the required approval or approvals of the resolution or plan of merger, a certificate of ownership consisting of an officers' certificate of the parent corporation shall be filed, and a copy thereof

for each domestic subsidiary corporation and qualified foreign disappearing subsidiary corporation which is a party to the merger shall also be filed. The certificate of ownership shall:

(1) Identify the parent and subsidiary corporation or corporations.

(2) Set forth the share ownership by the parent corporation of each subsidiary corporation as 100 percent of the outstanding shares or as at least 90 percent of the outstanding shares of each class, as the case may be.

(3) Set forth the resolution or plan of merger.

(4) Set forth approval of the resolution or plan of merger by the board of the parent corporation.

(5) Set forth other approvals of the resolution or plan of merger as required under subdivision (b) or (c), if applicable.

(f) The certificate of ownership shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured.

(g) Upon the filing of the certificate of ownership, the merger shall be effective and any amendment of the articles of the surviving corporation set forth in the certificate shall be effective.

(h) A merger pursuant to this section may be effected if the parent corporation is a foreign corporation and if at least one subsidiary corporation is a domestic corporation but in such a case the certificate of ownership prepared as in subdivision (e) or the document required by subdivision (d) of Section 1108 shall be filed as to each domestic and qualified foreign subsidiary corporation, but no filing shall be made as to the foreign parent corporation. No merger into or with a foreign corporation may be effected as provided by this section unless the laws of the state or place of its incorporation permit that action.

(i) In the event all of the outstanding shares of a subsidiary domestic corporation party to a merger effected under this section are not owned by the parent corporation immediately prior to the merger, the parent corporation shall, at least 20 days before the effective date of the merger, give notice to each shareholder of such subsidiary corporation that the merger will become effective on or after a specified date. The notice shall contain a copy of the resolution or plan of merger and the information required by subdivision (a) of Section 1301. The notice shall be sent by mail addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. The shareholder shall have the right to demand payment of cash for the shares of the shareholder pursuant to Chapter 13 (commencing with Section 1300).

(j) If an agreement of merger is entered into between a parent

corporation and one or more of its subsidiary corporations and the share ownership requirements of subdivision (a) are met, the agreement of merger may be filed as a plan of merger with a certificate of ownership in accordance with the requirements of this section, in which case Sections 1101, 1102, 1103, 1200, 1201, and 1202 shall not apply; or the agreement of merger may be filed pursuant to Section 1103, in which case this section shall not apply.

SEC. 2. Section 1300 of the Corporations Code is amended to read:

1300. (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, "dissenting shares" means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger either (i) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 or (ii) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares described in clause (i) or (ii) if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

(2) Which were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (i) were not voted in favor of the reorganization or, (ii) if described in clause (i) or (ii) of paragraph (1) (without regard to the provisos in that paragraph), were voted against the reorganization, or which were held of record on the effective date of a short-form merger; provided, however, that clause (i) rather than clause (ii) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent rather than at a meeting.

(3) Which the dissenting shareholder has demanded that the

corporation purchase at their fair market value, in accordance with Section 1301.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, "dissenting shareholder" means the recordholder of dissenting shares and includes a transferee of record.

CHAPTER 1019

An act to amend Sections 1270.5, 1271, 1272.5, 1272.6, 1301, 1320, and 1325 of, and to add Section 655.6 to, the Business and Professions Code, and to amend Section 20 of Chapter 927 of the Statutes of 1989, relating to healing arts.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 655.6 is added to the Business and Professions Code, to read:

655.6. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from any patient, client, customer, or third-party payor for cytologic services relating to the examination of gynecologic slides if those services were not actually rendered by that person or under his or her direct supervision.

This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if those services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(b) Clinical laboratories performing cytologic examinations of gynecologic slides shall directly bill either the patient or the responsible third-party payor for the cytology services rendered by those laboratories. Clinical laboratories shall not bill the physician or surgeon who requests the tests.

SEC. 2. Section 1270.5 of the Business and Professions Code is amended to read:

1270.5. (a) Notwithstanding Section 1301, an application for the renewal of, and payment of the renewal fees for, a cytotechnologist license shall be governed by this section.

(b) Application for renewal of a cytotechnologist license, accompanied by the fee set forth in Section 1300, shall be filed with the department not less than 30 days prior to the expiration date.

(c) If the renewal fee is not paid during the 30 days prior to the expiration date, the license shall automatically expire at midnight on the expiration date. However, a cytotechnologist who has failed to

timely pay a renewal fee may have his or her license reinstated, without completing a competency testing program, provided that he or she mails to the department a written request for reinstatement postmarked no later than the 60th day after the expiration date of the license and a reinstatement fee equal to two times the annual renewal fee set forth in Section 1300. The license shall be reinstated on the date the request for reinstatement and fee are received by the department. If the request for reinstatement and fee are received prior to the expiration date of the license, there shall be no lapse in licensure. No cytotechnologist shall perform services for which a license or certification is required under this chapter during any period for which licensure or certification has lapsed.

SEC. 3. Section 1271 of the Business and Professions Code is amended to read:

1271. (a) A cytotechnologist shall not examine more than 80 gynecologic slides in a 24-hour period.

(b) The maximum workload limit in subdivision (a) is the maximum number of gynecologic slides that a cytotechnologist shall examine in a 24-hour period without regard to the number of clinical laboratories or other persons for which the work is performed. Cytotechnologists who examine both gynecologic and nongynecologic slides shall do so on a pro rata basis such that the maximum workload limit in subdivision (a) is not exceeded, and such that the number of gynecologic slides examined is reduced proportionally if both gynecologic and nongynecologic slides are examined in a 24-hour period.

(c) The maximum workload limit in subdivision (a) is for a cytotechnologist who has no duties other than the evaluation of gynecological slides. Cytotechnologists who have other duties, such as the preparation and staining of cytologic slides, shall decrease on a pro rata basis the number of slides examined.

(d) All cytologic slides shall be examined in a clinical laboratory which has been licensed by the department, or in a municipal or county laboratory established under Section 1000 of the Health and Safety Code. All slides examined under the name of a clinical laboratory shall be examined on the premises of that laboratory.

(e) Each clinical laboratory shall maintain records of the number of cases and slides for gynecologic and nongynecologic samples examined on a monthly and annual basis.

(f) Each cytotechnologist shall maintain current records in a form prescribed by the department of hours worked and the names and addresses of the clinical laboratories or other persons for whom slides are examined.

(g) Each clinical laboratory shall retain all cytology slides and cell blocks examined for a minimum of five years and all cytology reports for a minimum of 10 years.

(h) The presence of any factor which would prohibit the proper examination of a cytologic slide, including, but not limited to, damaged slides or inadequate specimens, as determined by the

director of the laboratory, shall result in the issuance of a statement of inadequacy to the referring physician and no report of cytologic findings shall be issued on that slide.

(i) Each clinical laboratory shall maintain records of the number of cases and slides for gynecologic and nongynecologic slides each cytotechnologist in the laboratory reads each 24-hour period, the number of hours devoted during each 24-hour period to screening cytology slides by each individual, and shall determine weekly and cumulatively the frequency of abnormal slides found by each cytotechnologist employed.

(j) Ten percent of the negative or normal slides examined by each cytotechnologist employed by a clinical laboratory shall be rescreened at least weekly by a cytopathologist or supervising cytotechnologist other than the original examiner.

SEC. 4. Section 1272.5 of the Business and Professions Code is amended to read:

1272.5. (a) A laboratory in a state other than California which is regularly providing cytology services for laboratories, physicians, or beneficiaries located in California shall be certified by the department as substantially meeting the requirements for a California clinical laboratory license, including the requirements relating to the practice of diagnostic cytology.

(b) The department shall issue guidelines as the basis for issuing letters of substantial equivalency to out-of-state clinical laboratories providing cytology services. For the purposes of determining substantial equivalency to California standards for diagnostic cytology, the department may require the annual submission of an application containing information as the department may determine to be necessary to properly evaluate the laboratory. If, in the opinion of the department, the information provided by the applicant is not sufficient or adequate for the purposes of determining substantial equivalency, the department may require a site visit by departmental personnel to the applicant's laboratory. If a site visit is required, the applicant shall agree to reimburse the State of California for the actual cost of expenses incurred for not more than two persons from the staff of the department.

(c) The department may establish a schedule of fees to be paid by out-of-state clinical laboratories which make applications to the department for letters of substantial equivalency, which fees shall be set at a level to fully offset, but not exceed, the total cost to the department of reviewing and processing applications for, and issuing letters of, substantial equivalency from the out-of-state clinical laboratories.

This section shall be operative until January 1, 1995, and as of that date is repealed.

SEC. 5. Section 1272.6 of the Business and Professions Code is amended to read:

1272.6. The department shall, on or before January 1, 1992, develop or adopt a proficiency testing program for laboratories

providing cytology services which may be administered by the department or by a proficiency testing service or program approved by the department. The proficiency program established pursuant to this section shall include announced and unannounced onsite proficiency testing, with that testing to take place, to the extent practicable, under normal working conditions.

SEC. 6. Section 1301 of the Business and Professions Code is amended to read:

1301. The annual renewal fee set under this chapter shall be paid during the 30-day period before the first day of January of each calendar year. Failure to pay the annual fee in advance during the time the license remains in force shall, ipso facto, work a forfeiture of said license after a period of 60 days from the first day of January of each year.

The department shall give written notice to all licensees 30 days in advance of the regular renewal date that a renewal fee has not been paid. In addition, the department shall give written notice to licensed clinical laboratory bioanalysts or doctoral degree specialists and clinical laboratory technologists or limited technologists by registered or certified mail 90 days in advance of the expiration of the fifth year that a renewal fee has not been paid and if not paid before the expiration of the fifth year of delinquency the licensee may be subject to reexamination.

If the renewal fee is not paid for five or more years, the department may require an examination before reinstating the license, except that no examination shall be required as a condition for reinstatement if the original license was issued without an examination. No examination shall be required for reinstatement if the license was forfeited solely by reason of nonpayment of the renewal fee if such nonpayment was for less than five years.

If the license is not renewed within 60 days after its expiration, the licensee, as a condition precedent to renewal, shall pay the delinquency fee identified in subdivision (*l*) of Section 1300, in addition to the renewal fee in effect on the last preceding regular renewal date. Payment of the delinquency fee will not be necessary if within 60 days of the license expiration date the licensee files with the department an application for inactive status.

SEC. 7. Section 1320 of the Business and Professions Code is amended to read:

1320. The department may deny, suspend, or revoke any license issued under this chapter for any of the following reasons:

(a) Conduct involving moral turpitude or dishonest reporting of tests.

(b) Violation by the applicant or licensee of this chapter or any rule or regulation adopted pursuant thereto.

(c) Aiding, abetting, or permitting the violation of this chapter, the rules or regulations adopted under this chapter or the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code

(d) Permitting a licensed trainee to perform tests or procure specimens unless under the direct and responsible supervision of a person duly licensed under this chapter or physician and surgeon other than another licensed trainee.

(e) Violation of any provision of the Business and Professions Code governing the practice of medicine and surgery.

(f) Proof that an applicant or licensee has made false statements in any material regard on the application for a license or renewal issued under this chapter.

(g) Conduct inimical to the public health, morals, welfare, or safety of the people of the State of California in the maintenance or operation of the premises or services for which a license is issued under this chapter.

(h) Proof that the applicant or licensee has used any degree, or certificate, as a means of qualifying for licensure which has been purchased or procured by barter or by any unlawful means or obtained from any institution which at the time said degree, certificate, or title was obtained was not recognized or accredited by the department of education of the state where said institution is or was located to give training in the field of study in which the degree, certificate, or title is claimed.

(i) Violation of any of the premarital or prenatal laws or regulations pertaining thereto in Article 3 (commencing with Section 4300) of Chapter 2 of Title 1 of Part 5 of Division 4 of the Civil Code and Article 1 (commencing with Section 1125) of Group 4 of Subchapter 1 of Chapter 2 of Part 1 of Title 17 of the California Code of Regulations, or of Article 2 (commencing with Section 3220) of Chapter 4 of Division 4 of the Health and Safety Code.

(j) Knowingly accepting an assignment for clinical laboratory tests or specimens from and the rendering a report thereon to persons not authorized by law to submit those specimens or assignments.

(k) Rendering a report on clinical laboratory work actually performed in another clinical laboratory without designating clearly the name and address of the laboratory in which the test was performed.

(*l*) Conviction of a felony or of any misdemeanor involving moral turpitude under the laws of any state or of the United States arising out of or in connection with the practice of clinical laboratory technology. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(m) Unprofessional conduct.

(n) The use of drugs or alcoholic beverages to the extent or in such manner as to be dangerous to a person licensed under this chapter, or any other person to the extent that that use impairs the ability of the licensee to conduct with safety to the public the practice of clinical laboratory technology.

SEC. 8. Section 1325 of the Business and Professions Code is amended to read:

1325. Notwithstanding Sections 1267 and 1322, the license of a clinical laboratory which has been involuntarily excluded from participation under the Medicare program under Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395 et seq.), under the Medicaid Program under Title XIX of the Social Security Act (42 U.S.C. Sec. 1396), or which had its certificate revoked under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a), shall have its license automatically suspended by the department for the period the laboratory is so excluded or has its certificate revoked.

SEC. 9. Section 20 of Chapter 927 of the Statutes of 1989 is amended to read:

Sec. 20. The State Department of Health Services shall submit a preliminary report to the Legislature on or before January 1, 1992, and a final report on or before January 1, 1994, relative to regulations developed and adopted pursuant to this act. Whenever the federal government implements the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578, 42 U.S.C. Sec. 263a, Sec. 353 of the Public Health Service Act) with the issuance of regulations, the department shall review those regulations and shall submit a report to the Legislature concerning whether the requirements imposed by this act are at least as stringent as those imposed by the federal regulations, and concerning any inconsistencies between this act and the federal regulations.

The department shall also report to the Legislature by January 1, 1992, concerning state costs associated with competency testing programs for cytotechnologists and proficiency testing programs for laboratories providing cytology services, and concerning whether approved programs exist to provide these testing services in lieu of state administration of such programs.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1020

An act to amend Section 6200 of the Business and Professions Code, relating to attorneys.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or ciminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) 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.

(g) In the conduct of arbitrations under this article the 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 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 a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, 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.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall

be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) 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.

(g) 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. 3. Section 2 of this bill incorporates amendments to Section 6200 of the Business and Professions Code proposed by both this bill and SB 2066. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 6200 of the Business and Professions Code, and (3) this bill is enacted after SB 2066, in which case Section 1 of this bill shall not become operative.

CHAPTER 1021

An act to add Section 12761.1 to the Insurance Code, relating to insurance.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 12761.1 is added to the Insurance Code, to read:

12761.1. (a) A home protection company which was licensed as such on December 31, 1988, and as of that date was a franchisor of entities authorized by Section 771.1 to solicit, negotiate, or effect home protection contracts, or a parent, subsidiary, or affiliate of such a franchisor, and continues to be such a franchisor or parent, subsidiary, or affiliate of such a franchisor, may provide coverage for a listing period.

(b) For the purposes of this section, a "listing period" means a period prior to the time an interest in the home to which the home protection coverage attaches is sold, during which there is in effect an exclusive right to sell listing as that term is defined in Section 1086 of the Civil Code, between the seller of that home and a franchisee of that franchisor.

(c) Home protection contracts providing listing period coverage issued pursuant to this section shall be exempt from the provisions of both of the following:

(1) Subdivision (c) of Section 12740, which requires a separately stated pro rata portion of the annual fee for the period of coverage which exceeds one year.

(2) Subdivision (a) of Section 12753, which requires reserves for unearned premiums applicable to the listing period coverage provided under those home protection contracts.

CHAPTER 1022

An act to amend Sections 7301 and 7314 of, and to add Sections 7320, 7321, 7321.5, and 7322 to, the Labor Code, relating to elevators.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 7301 of the Labor Code is amended to read:

7301. No elevator shall be operated in this state unless a permit for the operation thereof is issued by the division, and unless the permit remains in effect and is kept posted conspicuously in the elevator car. Operation of an elevator without a permit or failure to post the permit conspicuously shall constitute cause for the division to prohibit use of the elevator, unless it can be shown that a request for issuance or renewal of a permit has been made and the request has not been acted upon by the division.

SEC. 2. Section 7314 of the Labor Code is amended to read:

7314. (a) The division may fix and collect fees for the inspection of elevators as it deems necessary to cover the actual costs of having the inspection performed by a division safety engineer, including administrative costs. An additional fee may, in the discretion of the division, be charged for necessary subsequent inspections to determine if applicable safety orders have been complied with.

(b) The division may charge a fee of not more than fifteen dollars ($15) to cover the cost of processing a permit.

(c) The division may fix and collect fees for field consultations regarding elevators as it deems necessary to cover the actual costs of the time spent in the consultation by a division safety engineer, including administrative expenses.

(d) Whenever a person owning or having the custody, management, or operation of an elevator fails to pay the fees required under this chapter within 60 days after notification, he or she shall pay in addition to the fees required under this chapter, a penalty fee equal to 100 percent of the fee. Failure to pay fees within 60 days after notification shall constitute cause for the division to

prohibit use of the elevator.

(e) Any fees required pursuant to this section shall be embodied in regulations which shall be adopted as emergency regulations. These emergency regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 3. Section 7320 is added to the Labor Code, to read:

7320. The division may assess a civil penalty of up to one thousand dollars ($1,000) against any person owning or having custody, management, or operation of an elevator, who operates the elevator without a permit or who fails to conspicuously post the permit in the elevator car. No penalty shall be assessed where a request for issuance or renewal of a permit has been made and the request has not been acted upon by the division.

SEC. 4. Section 7321 is added to the Labor Code, to read:

7321. The division may assess a civil penalty of up to two thousand dollars ($2,000) against any person owning or having custody, management, or operation of an elevator, who operates or permits the operation of the elevator in a condition that is dangerous to the life or safety of any person, or who operates or permits the operation of the elevator in violation of an order prohibiting use issued pursuant to Sections 7301, 7305, and 7314.

SEC. 5. Section 7321.5 is added to the Labor Code, to read:

7321.5. The division shall enforce Sections 7320 and 7321 by issuance of a citation and notice of civil penalty in a manner consistent with Sections 6317 and 6319. Any person owning or having custody, management, or operation of an elevator who receives a citation and notice of civil penalty may appeal to the Occupational Safety and Health Appeals Board in a manner consistent with Section 6319.

SEC. 6. Section 7322 is added to the Labor Code, to read:

7322. Once an authorized representative of the division has issued an order prohibiting the use of an elevator as specified in Sections 7301, 7305, and 7314, the person owning or having custody, management, or operation of the elevator may contest the order and shall be granted, upon request, a hearing to review the validity of the order. The hearing shall be held no later than 10 working days following receipt of the request for hearing.

CHAPTER 1023

An act to amend Sections 14000, 14002, 14022, 14027, 14029, 14039, and 14052 of, and to repeal and add Section 14028 of, the Corporations Code, to amend Sections 15379.11 and 15379.13 of, and to add Section 15331.2 to the Government Code, relating to small business development corporations, and making an appropriation therefor.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 14000 of the Corporations Code is amended to read:

14000. This chapter shall be known and may be cited as the "Small Business Development Corporation Law."

SEC. 1.5. Section 14002 of the Corporations Code is amended to read:

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, including women and minority owned businesses, 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.

SEC. 2. Section 14022 of the Corporations Code is amended to read:

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) Review and approve the yearly contracts between the corporations and OSB.

(f) Recommend to the executive director the appointment of advisory groups 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.

SEC. 3. Section 14027 of the Corporations Code is amended to read:

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 pursuant to Section 14028.

SEC. 4. Section 14028 of the Corporations Code is repealed.

SEC. 5. Section 14028 is added to the Corporations Code, to read:

14028. (a) Upon a finding by the executive director that irreparable harm may occur if guarantee authority is not temporarily withdrawn from a corporation, the executive director may temporarily withdraw guarantee authority from a corporation. As used in this section, "guarantee authority" means the authority to make or guarantee any loan which encumbers funds in a corporate fund. The executive director shall call an emergency board meeting within 10 working days following the effective date of the temporary withdrawal, at which the board shall make one of the determinations specified in subdivision (c). The corporation's yearly contract shall remain in effect during the period of temporary withdrawal, and the

corporation shall continue to receive reimbursement of necessary operating expenses.

(b) Failure of a corporation to substantially comply with the following may result in the suspension of a corporation:

(1) Regulations implementing the Small Business Development Corporation Law.

(2) The plan of operation specified in subdivision (d) of Section 14025.

(3) Fiscal and portfolio requirements, as contained in the fiscal and portfolio audits specified in Section 14027.

(c) The executive director, upon a finding that a corporation has failed to comply with the requirements specified in subdivision (b), may recommend to the board the suspension of a corporation. The determinations which may be made by the board are to do the following:

(1) Disapprove the requested suspension.

(2) Disapprove the requested suspension subject to the corporation's adoption of a specified remedial action plan.

(3) Temporarily withdraw, or continue to withdraw, guarantee authority until a specified time. This determination by the board requires a finding that the corporation has failed to comply with the Small Business Development Corporation Law.

(4) Suspend the corporation, effective immediately.

(5) Suspend the corporation, with suspension stayed until the corporation provides a remedial action plan to the board, and the board decides whether to repeal or implement the stayed suspension. The determinations contained in paragraphs (4) and (5) require a finding that irreparable harm will occur unless the corporation is suspended. Except as described in Section 14029, a decision by the board to suspend a corporation is final and without administrative appeal.

(d) In considering a determination regarding the recommended suspension and possible remedial action plans, the board shall consider, along with other criteria as specified in subdivision (b), the extent to which the corporation has generally complied with the intent of this chapter, including the legislative intent expressed in Section 14002.

(e) If the board votes to suspend a corporation, the executive director shall transfer all funds, whether encumbered or not, in the corporate account of the suspended corporation into either the expansion fund or temporarily transfer the funds to another corporation.

(f) Following suspension, the corporation may continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2, but shall no longer be registered with the Secretary of State as a small business development corporation. A corporation shall not enjoy any of the benefits of a small business development corporation following suspension.

SEC. 6. Section 14029 of the Corporations Code is amended to read:

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 the issuance of a certificate of revivor by the Secretary of State upon the request of the board.

SEC. 7. Section 14039 of the Corporations Code is amended to read:

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 or suspension of the corporation, these funds shall be withdrawn by the executive director from the corporate account and returned to the expansion fund or temporarily transferred to another corporate fund. This provision shall be contained in the trust instructions to the trustee.

SEC. 8. Section 14052 of the Corporations Code is amended to read:

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 the recommendation of the executive director and approval by the board. This suspension is nonappealable and not subject to the procedures for suspension applicable to a corporation not on probation.

SEC. 9. Section 15331.2 is added to the Government Code, to read:

15331.2. (a) The Legislature finds and declares that while a myriad of sources of technical assistance and information are available within the state on small businesses, lack of integration of those sources and lack of adequate information on the state's small businesses remains a problem when addressing the status of small business from a legislative perspective.

(b) It is the intent of the Legislature that, in order to provide a better framework for consideration of the issues regarding the state's small businesses, the Department of Commerce shall maintain a centralized information system on small business. The data shall be compiled from, but not limited to, the following:

(1) State Board of Equalization.

(2) Franchise Tax Board.

(3) Office of Small and Minority Business within the Department of General Services.

(4) Employment Development Department.

(5) Small Business Advocate within the Business, Transportation and Housing Agency.

(6) United States Small Business Administration.

(7) United States Census Bureau.

This data shall include, but not be limited to, any pertinent information regarding the numbers of small businesses, demographics, minority- and women-owned, net income, payroll, employee benefits, funding sources, size classification, and any other information deemed necessary by the Department of Commerce to carry out the objectives of this chapter.

The above-named departments and units within the California state government shall be responsible for full cooperation with the Department of Commerce to explore opportunities for expanding the scope and amount of information on the state's small business economy.

Nothing in this section shall require an agency providing the information required under this section to disclose any confidential information that would link the data to the individual to whom it pertains.

(c) A statistical abstract of data compiled under subdivision (b) shall be provided by the Department of Commerce to the Legislature and to each of the Senate and Assembly Select Committees on Small Business Enterprise on an annual basis thereafter.

SEC. 10. Section 15379.11 of the Government Code is amended to read:

15379.11. (a) In order to carry out the provisions of this chapter, there is hereby created in the State Treasury the California Competitive Technology Fund.

(b) The fund shall receive state funds appropriated to it, contributions from nonstate sources, reimbursements, federal funds, and interest which accrues to the moneys in the fund pursuant to subdivision (c).

(c) The Treasurer shall invest moneys contained in the fund not needed to meet current obligations in the same manner as other public funds are invested.

(d) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated without regard to fiscal years to the department for the purposes of this chapter, Sections 15333.5 and 15333.6, and for the purposes for which moneys were provided. Except for state funds appropriated to, or transferred into, the fund for local assistance, moneys in the fund, including all interest, may be spent for support.

SEC. 11. Section 15379.13 of the Government Code is amended to read:

15379.13. Of the amount appropriated for local assistance, the first two hundred thousand dollars ($200,000) shall be allocated for the purposes described in Chapter 1500 of the Statutes of 1987.

CHAPTER 1024

An act to amend Sections 1095, 1255.7, and 2630 of the Unemployment Insurance Code, relating to support obligations.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives, or the State Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when

appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 23910.3 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the

unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

SEC. 2. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the State Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section

17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining

only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 23910.3 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or

administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(r) To provide county probation departments with wage and claim information in its possession that will assist those departments in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county or the state by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. The county shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdeameanor. Any person who obtains information in violation of this subdivision is guilty of a misdeameanor.

SEC. 3. Section 1255.7 of the Unemployment Insurance Code is amended to read:

1255.7. (a) The State Department of Social Services shall notify the director whether an individual filing a claim for unemployment compensation after October 1, 1982, owes support obligations as defined under subdivision (h), and notify the department of any changes in the status of these individuals to ensure that the department has a current record.

(b) The department shall maintain and keep current a record of individuals who owe support obligations and who may have claims for unemployment compensation benefits.

(c) The department shall deduct and withhold support obligations as defined under subdivision (h) from any unemployment compensation payable to an individual who owes these obligations.

(d) Any amount deducted and withheld under subdivision (c) shall be paid by the department to the appropriate county or to the State Department of Social Services as the assigned payee, as stipulated by mutual agreement, in the interagency agreement between the department and the State Department of Social Services.

(e) Any amount deducted and withheld under subdivision (c)

shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State Department of Social Services.

(f) For purposes of subdivisions (a) to (e), inclusive, "unemployment compensation" means any compensation payable under this division, except Part 2 (commencing with Section 2601), but including amounts payable by the department pursuant to an agreement under any federal unemployment compensation law.

(g) This section applies only if appropriate arrangements have been made for reimbursement by the State Department of Social Services for the administrative costs incurred by the Employment Development Department.

(h) For purposes of this section, "support obligations" means the child and related spousal support obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act.

SEC. 4. Section 2630 of the Unemployment Insurance Code is amended to read:

2630. (a) The State Department of Social Services shall periodically notify the department of individuals who are certified, as provided in Section 11350.5 of the Welfare and Institutions Code, as having support obligations, as defined by subdivision (g) and notify the department of any changes in the status of these individuals to ensure that the department has a current record.

(b) Upon receipt of the notifications referred to in subdivision (a), the department shall determine whether the individuals have claims for unemployment compensation disability benefits, either with the department or under an approved voluntary plan.

(c) If the department determines that an individual referred to in subdivision (a) has a claim for unemployment compensation disability benefits with an approved voluntary plan, it shall notify the voluntary plan payer. When the State Department of Social Services notifies the department of any changes in the individual's status as to his or her support obligations, the department shall in turn notify the voluntary plan payer. Upon notification from the department, the voluntary plan payer shall deduct and withhold the amounts specified in Section 11350.5 of the Welfare and Institutions Code from the unemployment compensation disability benefits that would otherwise be payable to the individual. For each withholding, the voluntary plan payer shall deduct an amount which represents the amount withheld for support obligations and may also deduct an administrative fee representing actual costs, not to exceed two dollars ($2). In no event shall the withholding and the administrative fee exceed 25 percent or a lesser amount as specified in subdivision (e) of Section 11350.5 of the Welfare and Institutions Code. The voluntary plan payer shall pay the amounts for support deducted and withheld pursuant to this section to the appropriate certifying county.

(d) The department shall maintain a current record of individuals

certified as owing support obligations. If the department determines that the individual has a claim for unemployment compensation disability benefits with the department, it shall deduct and withhold the amounts specified in Section 11350.5 of the Welfare and Institutions Code from the unemployment compensation disability benefits that would otherwise be payable to the individual. The department shall periodically pay the amounts deducted and withheld to the appropriate county or to the State Department of Social Services as the assigned payee, as stipulated by mutual agreement, in the interagency agreement between the department and the State Department of Social Services.

(e) Amounts deducted and withheld from an individual's unemployment compensation disability benefits in accordance with subdivision (c) or (d) shall for all purposes be treated as if it were paid to the individual and then paid by the individual to the State Department of Social Services or the appropriate certifying county.

(f) This section shall apply only if appropriate arrangements are made for the State Department of Social Services to reimburse the department for its administrative costs for performing the functions required of it by this section.

(g) For purposes of this section, "support obligations" means the child and related spousal support obligations described in the state plan approved pursuant to Section 454 of the Social Security Act.

SEC. 5. Section 2 of this bill incorporates amendments to Section 1095 of the Unemployment Insurance Code proposed by both this bill and SB 2053. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 1095 of the Unemployment Insurance Code, and (3) this bill is enacted after SB 2053, in which case Section 1 of this bill shall not become operative.

CHAPTER 1025

An act to add Section 5075.8 to the Public Resources Code, relating to parks and recreation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 5075.8 is added to the Public Resources Code, to read:

5075.8. (a) The department may convene a planning task force in order to facilitate the development of a comprehensive plan for the San Joaquin River Parkway.

The task force shall include, but not be limited to, a representative

of the following entities:

(1) State Lands Commission.
(2) Department of Parks and Recreation.
(3) Department of Fish and Game.
(4) State Reclamation Board.
(5) County of Fresno.
(6) County of Madera.
(7) City of Fresno.
(8) Fresno County and City Chamber of Commerce.
(9) Fresno Sand and Gravel Producers.
(10) San Joaquin River Property Owners Association.
(11) Upper San Joaquin River Association.
(12) San Joaquin River Parkway and Conservation Trust.
(13) San Joaquin River Committee.
(14) Department of Boating and Waterways.

(b) The plan shall be submitted to the Legislature not later than June 1, 1991.

SEC. 2. The Department of Parks and Recreation may contract for the development of the comprehensive plan for the San Joaquin River Parkway pursuant to Section 5075.8 of the Public Resources Code and may expend for this purpose up to one hundred thousand dollars ($100,000) of the funds appropriated from the California Environmental License Plate Fund to the department for environmental studies for the San Joaquin Parkway general plan pursuant to subparagraph (C) of paragraph (4) of subdivision (b) of Section 4 of Chapter 1241 of the Statutes of 1989. The department may also expend any funds appropriated by the Budget Act of 1990 for this purpose, or any contributions from other sources received for this purpose.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the needed planning for the San Joaquin River Parkway may proceed as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1026

An act to amend Section 29720 of, and to add Section 41.5 to, the Elections Code, relating to initiatives.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 41.5 is added to the Elections Code, to read:

41.5. Notwithstanding any other provision of law, any state or local initiative petition required to be signed by voters shall contain in 12-point type, prior to that portion of the petition for voters' signatures, printed names, and residence addresses, the following language:

NOTICE TO THE PUBLIC

THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

SEC. 2. Section 29720 of the Elections Code is amended to read:

29720. Every person is guilty of a misdemeanor who:

(a) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, referendum or recall petition, intentionally misrepresents or intentionally makes any false statement concerning the contents, purport or effect of the petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature.

(b) Willfully and knowingly circulates, publishes or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any state or local initiative, referendum, or recall petition for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.

(c) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, intentionally makes any false statement in response to any inquiry by any voter as to whether he or she is a paid signature gatherer or a volunteer.

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 1027

An act to amend Sections 5002.3 and 5028 of the Public Resources Code, relating to public resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 5002.3 of the Public Resources Code is amended to read:

5002.3. A public hearing shall be scheduled by the State Park and Recreation Commission to consider each matter of classification or reclassification of a unit and of approval of the department's general plan for a unit. Notice of the hearing shall be posted in plain sight at one or more places within the affected unit, published in one or more newspapers of general circulation in each county within which the affected unit is located, and mailed to every person who has filed a request for notice of the hearing with the commission. If the notice of hearing is published in a weekly newspaper, it shall appear therein on at least two different days of publication; and if in a newspaper published more often, there shall be at least five days from the first to the last day of publication, both days included. The content of the notice of hearing shall substantially comply with the requirements of Section 11346.5 of the Government Code.

Copies of the department's inventory of features, in the case of a hearing on classification or reclassification, or copies of the department's general plan, in the case of a hearing on approval of the plans, shall be made available to the public at the department's appropriate regional and district offices on the last date of publication of the notice.

The hearing shall be held by the commission in, or within a radius of 100 miles of, the City of San Diego, Los Angeles, San Francisco, San Bernardino, Eureka, Redding, Fresno, Ukiah, Monterey, San Luis Obispo, Santa Barbara, or Sacramento, whichever is closest to the unit affected, not less than 30 days, nor more than 60 days, after the last date of publication of the notice. The hearing shall be conducted in the manner specified in Section 11346.8 of the Government Code. The vote of each individual member of the commission on each matter of classification or reclassification and of approval of the department's general plan shall be recorded when the final decision of the commission is announced.

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 preserve historic structures damaged in natural disasters without further destruction and with maximum protection for the public safety, and in order to provide for effective administration of the state park system at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1028

An act to amend and repeal Section 5698 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

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

(a) Over the past quarter century, the rate of suicide for youths aged 15 to 24 years of age has increased remarkably. Every day, two or more California youths take their own lives.

(b) Each year 4,000 Californians take their own lives and another 400,000 persons make serious attempts to do so. The "at risk" population includes all segments of the general population, with overrepresentation occuring in males, both young and old. It is predicted that suicidal deaths among the elderly will dramatically increase as our population continues to age. While the overall rates of completed suicides have remained constant during the last two decades, there have been dramatic increases in the rates of suicide among younger and older males.

(c) The distress and turmoil associated with suicidal behaviors impacts thousands of family members and close friends.

(d) Suicidal behavior can be prevented. Most persons at risk share their thoughts of self-destruction with at least one other person before the act. How people respond to those messages about suicide is very important. The response is an opportunity to intervene with the caring, support, and direct action that can prevent a suicide.

(e) Present evidence indicates that many caregivers feel inadequately prepared to deal with suicidal behavior. The need for training programs in suicide intervention techniques for all levels of caregivers has been ranked as a high priority by the World Health Organization.

SEC. 2. Section 5698 of the Welfare and Institutions Code is amended to read:

5698. The department shall maintain a youth suicide prevention program which includes all of the following:

(a) Research and data collection on youth suicide.

(b) Public education material production and distribution in conjunction with other public agencies and the private sector throughout the state.

(c) Training programs involving students, parents, teachers, school administrators, mental health professionals, local social service agencies, juvenile justice representatives, and others concerned with the problem of youth suicide.

(d) An evaluation and report to the Governor and Legislature no later than July 1, 1991. If the evaluation of the program is satisfactory, it is the intent of the Legislature to expand the youth suicide prevention program to include research and data collection, public education material production and distribution, and training programs to address the needs of California's adult population in need of suicide interventions.

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 1029

An act to add Section 11755.5 to the Health and Safety Code, relating to alcohol and drug abuse.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

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

(a) An unknown but increasing number of runaway and homeless youths live in California's streets and are exposed to a web of drugs, crime, and pandering that may entangle their lives forever.

(b) Since 1986, California has funded projects, through the Office of Criminal Justice Planning, to meet the needs of runaway and homeless youths in San Francisco and Los Angeles.

(c) Statistical documentation from those projects has proved them to be an efficient and effective way to remove adolescents permanently from the streets and place them back into the mainstream of life.

(d) Despite the success of those projects, there is a continuing gap in services for the estimated 50 percent to 85 percent of runaway and homeless youths who have substance abuse problems.

(e) In 1989, the County of Los Angeles calculated out of all runaway youths seeking medical assistance, 75 percent of those

engaged in prostitution had a substance abuse problem, compared to 36 percent of those not engaged in prostitution.

(f) Sixty-three percent of those juvenile prostitutes with substance abuse problems do not believe that they have a substance abuse problem. As a result, they do not seek help. For this reason, an outreach program is vital to ensure that these youths are treated for substance abuse problems.

(g) Juvenile prostitutes not only have higher rates of alcohol and drug abuse, but also have a higher rate of suicide, criminal activity, HIV infection, and mental health disorders. Juvenile prostitutes also have the lowest rate of successful reunification with their families.

SEC. 2. Section 11755.5 is added to the Health and Safety Code, to read:

11755.5. (a) To the extent funding is provided pursuant to subdivision (c), a two-year pilot project shall be established by the homeless youth project operated in the County of Los Angeles pursuant to Chapter 6 (commencing with Section 13700) of Part 3 of Division 9 of the Welfare and Institutions Code to operate an outreach program targeted at treating substance abuse problems of substance-dependent homeless youth, including juvenile prostitutes. The department shall, in consultation with the Office of Criminal Justice Planning, develop guidelines for the scope of the pilot project established pursuant to this section which shall include, but not be limited to, requiring outreach to all shelters and drop-in facilities operated by the homeless youth project established in the County of Los Angeles. The department also shall, in consultation with the Office of Criminal Justice Planning, oversee the management of the pilot project established pursuant to this section.

(b) The department, in consultation with the Office of Criminal Justice Planning, shall submit to the Legislature a written interim evaluation of the effectiveness of the pilot project established pursuant to this section in addressing the needs of substance-dependent juvenile youths by July 1, 1992, and shall submit a written final evaluation thereof by June 1, 1993.

(c) To the extent permitted by federal law, the department shall enter into a contract in the amount of two hundred thousand dollars ($200,000), utilizing unobligated federal funds, with the homeless youth project established in the County of Los Angeles for the first year of the operation of the pilot project established pursuant to this section commencing March 1, 1991. It is the intent of the Legislature to provide for the funding of the second year of the pilot project through the Budget Act. The pilot project established pursuant to this section shall cease to operate on March 1, 1993.

CHAPTER 1030

An act to amend Section 10605.3 of, and to add and repeal Section 10605.4 of, the Health and Safety Code, relating to vital statistic records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 10605.3 of the Health and Safety Code is amended to read:

10605.3. (a) Commencing January 1, 1989, in addition to the fees prescribed by subdivisions (a) to (d), inclusive, of Section 10605, all applicants for certified copies of the records described in those subdivisions shall pay an additional fee of two dollars ($2), which shall be collected by the State Registrar, the local registrar, county recorder, or county clerk, as the case may be.

(b) Except as provided in paragraph (3), the local public official charged with the collection of the fee established pursuant to subdivision (a) may create a Vital and Health Statistics Trust Fund. The fees collected by local public officials pursuant to subdivision (a) shall be distributed as follows:

(1) One dollar ($1) of each two dollars ($2) collected shall be deposited with the State Registrar in the State Vital Record Improvement Project Fund established pursuant to Section 10040.

(2) The remainder of each two dollar ($2) fee collected shall be deposited into the collecting agency's Vital and Health Statistics Trust Fund.

(3) Any local public official that does not establish a local Vital and Health Statistics Trust Fund shall forward the entire two dollar ($2) fee to the State Registrar, who shall deposit the fees into the Vital Record Improvement Project Fund established pursuant to Section 10040.

(c) Moneys in each Vital and Health Statistics Trust Fund shall be available to the public official charged with the collection of fees pursuant to this section to defray the administrative costs of collecting and reporting with respect to those fees and for the other costs, as follows:

(1) Modernization of vital record operations, including improvement and automation of vital record systems.

(2) Improvement in the collection and analysis of health-related birth and death certificate information, and other community health data collection and analysis, as appropriate.

(d) Funds collected pursuant to this section shall not be used to supplant existing funding which is necessary for the daily operation of vital record systems. It is the intent of the Legislature that funds

collected pursuant to this section be used to enhance service to the public, to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children, maternal health problems, and to analyze the health status of the general population.

(e) Each county shall submit a report to the State Registrar by March 1, 1991, containing information on the amount of revenues collected pursuant to this section for the 1990 calendar year and on how the revenues were expended and for what purpose.

(f) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 10605.4 is added to the Health and Safety Code, to read:

10605.4. In addition to the fees prescribed by subdivisions (a) to (d), inclusive, of Section 10605, any applicant for a certified copy of any records described in those subdivisions shall pay an additional fee of one dollar ($1) to the State Registrar. Each local registrar, county recorder, or county clerk collecting a fee pursuant to this section shall transmit the entire fee to the State Registrar by the 10th day of the month following the month in which the fee was received.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs 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.

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. 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 alleviate the fiscal crisis confronting the State of California, it is necessary that this act take effect immediately.

CHAPTER 1031

An act to add Section 1170.81 to the Penal Code, relating to attempted murder.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 1170.81 is added to the Penal Code, to read:

1170.81. The fact that the intended victim of an attempted life term crime was a peace officer, as described in subdivisions (a) and (b) of Section 830.1, or Section 830.2, 830.5 or 830.6, while the peace officer was engaged in the performance of his or her duties, 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, shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

CHAPTER 1032

An act to amend Sections 105 and 113 of, to repeal and add Article 5 (commencing with Section 12100) of Chapter 1 of Part 4 of Division 2 of, and to add Sections 124 and 1861.137 to, the Insurance Code, relating to financial guaranty insurance, and making an appropriation therefor.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 105 of the Insurance Code is amended to read:

105. Surety insurance includes:

(a) The guaranteeing of behavior of persons and the guaranteeing of performance of contracts (including executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed), other than insurance policies and other than for payments secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate.

(b) Insurance against loss resulting from the forgery or alteration of any instrument of any kind or character or of any signature thereon. Nothing in this section shall be deemed to limit any of the powers of title insurers.

(c) Any of the following insurance when included as a part of contract containing any such guarantee of behavior or performance

or in a contract indemnifying any bank, banker, broker, financial or moneyed corporation or association, any state, political subdivision, public or municipal corporation, or any officer of any state, political subdivision, public or municipal corporation: Insurance indemnifying the insured named therein against loss or destruction from any cause of any evidences of debt of any kind or character, evidences of ownership of any kind or character, deeds, mortgages, warehouse receipts, bills of lading, certificates of stock, bonds, notes, drafts, checks, instruments of similar character, stamps, documents, money, precious metals of any kind or character, refined or unrefined, and articles made therefrom, jewelry, watches, necklaces, bracelets, gems and precious and semiprecious stones, and also against loss or damage, except by fire, to the insured's premises, furnishings, fixtures, equipment, safes and vaults therein caused by burglary, robbery, holdup, theft or larceny or attempt thereat. No such insurance indemnifying against loss of any property as specified herein shall indemnify against loss of any such property occurring while in the mail or in the exclusive custody or possession of a common carrier for the purpose of transportation, except for the purpose of transportation by an armored motor vehicle.

(d) No insurance may be written as surety insurance if it falls within the definition of financial guaranty insurance as set forth in Section 12100.

SEC. 2. Section 113 of the Insurance Code is amended to read:

113. Credit insurance includes insurance of persons engaged in business against loss by reason of extending credit to those dealing with them, and insurance against loss from the failure of persons to meet existing or contemplated obligations to the insured. However, no insurance may be written as credit insurance if it falls within the definition of financial guaranty insurance as set forth in Section 12100.

SEC. 3. Section 124 is added to the Insurance Code, to read:

124. "Financial guaranty insurance" means that insurance as defined by Section 12100.

SEC. 4. Section 1861.137 is added to the Insurance Code, to read:

1861.137. (a) Notwithstanding Section 1861.13, credit insurance shall not be subject to Sections 1861.01 and 1861.05. However, any rate for credit insurance shall be filed with the commissioner before it may be used in this state, and that rate may be used immediately upon filing with the commissioner.

(b) The rates for credit insurance shall not be excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter, except Sections 1861.01 and 1861.05.

SEC. 5. Article 5 (commencing with Section 12100) of Chapter 1 of Part 4 of Division 2 of the Insurance Code is repealed.

SEC. 6. Article 5 (commencing with Section 12100) is added to Chapter 1 of Part 4 of Division 2 of the Insurance Code, to read:

Article 5. Financial Guaranty Insurance

12100. As used in this article:

(a) (1) "Financial guaranty insurance" means a surety bond, insurance policy or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(A) Failure of any obligor on any debt instrument or other monetary obligation (including common or preferred stock guarantied under a surety bond, insurance policy, or indemnity contract) to pay when due principal, interest, premium, dividend, purchase price of or on the instrument or obligation, or other monetary payment when due when the failure is the result of a financial default or insolvency, regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted.

(B) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products.

(C) Changes in the rate of exchange of currency.

(D) Changes in the value of financial or commodity indices, or price levels in general.

(E) Other events that the commissioner determines by order, regulation, or written consent are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph (1), "financial guaranty insurance" shall not include any of the following:

(A) Insurance of any loss resulting from any event described in paragraph (1), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event.

(ii) A failure of or deficiency in the operation of equipment.

(iii) An inability to extract or recover a natural resource.

(B) Surety insurance as authorized by Section 105.

(C) Credit unemployment insurance, meaning insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed.

(D) Credit insurance authorized by Section 113.

(E) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions.

(F) Mortgage insurance authorized by Section 117.

(G) Mortgage guaranty insurance authorized by Section 119.

(H) Indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this article, in which a life insurer does any of the following:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in Section 1215) other than a financial guaranty insurance corporation; provided that:

(I) To the extent that any such obligations or indebtedness are backed by specific assets, those assets shall at all times be owned by the life insurer or the subsidiary.

(II) In the case of the guaranty of the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guaranty terminates once the subsidiary ceases to be a subsidiary.

(ii) Guaranties obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this clause have been either of the following:

(I) Acquired by a special purpose entity, whose sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by the assets.

(II) Sold to an independent third party.

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer.

(I) Any cramdown bond or mortgage repurchase bond, as those phrases are used by nationally recognized rating agencies in respect of mortgage backed securities.

(J) Residual value insurance.

(K) Any other form of insurance covering risks that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

(b) "Affiliate" means a person that, directly or indirectly, owns at least 10 but less than 25 percent of the financial guaranty insurance corporation or that is at least 10 percent but less than 25 percent, directly or indirectly, owned by a financial guaranty insurance corporation.

(c) "Asset-backed securities" means securities of an issuer provided that both of the following apply:

(1) The issuer of the securities is a special purpose corporation, trust, or other entity, or, provided that the securities constitute an insurable risk, is a bank, trust company, or other financial institution, deposits in which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or any successors thereto.

(2) The securities are related to a pool of assets so that all of the following apply:

(A) The pool of assets has been conveyed, pledged, or otherwise

transferred to or is otherwise owned or acquired by the issuer.

(B) The pool of assets backs the securities issued.

(C) No asset in the pool has a value exceeding 20 percent of the aggregate value of the pool.

(d) "Average annual debt service" means the amount of insured unpaid principal and interest on an obligation multiplied by the number of the insured obligations (assuming that each obligation represents a $1,000 par value), divided by the amount equal to the aggregate life of all of those obligations. This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service x Number of Bonds}}{\text{Bond Years}}$$

$$\text{Total Debt Service} = \text{Insured Unpaid Principal} + \text{Interest}$$

$$\text{Number of Bonds} = \frac{\text{Total Insured Principal}}{\$1{,}000}$$

$$\text{Bond Years} = \text{Number of Bonds x Term in Years}$$

(e) "Collateral" means any of the following:

(1) Cash.

(2) The scheduled cash flow from obligations which are not callable, where the underlying obligations cannot be prepaid in whole or in part by the original borrowers, and the principal of which are directly payable or guarantied by the United States government, or in the case of obligations denominated in the currency of a foreign country directly payable or guarantied by the government or central bank of that country, scheduled to be received on or prior to the date of scheduled debt service on the insured obligation.

(3) The market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations, in an amount not to exceed the principal of and interest on the insured obligation.

(4) The face amount of each letter of credit that meets all of the following criteria:

(A) Is irrevocable.

(B) Provides for payment under the letter of credit under all instances in which payment under a financial guaranty insurance policy is required.

(C) Is issued, presentable, and payable either:

(i) At an office of the letter of credit issuer in the United States.

(ii) At an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located.

(D) Contains a statement that either:

(i) Identifies the financial guaranty insurance corporation, its collateral agent, or any successor by operation of law, including any

liquidator, rehabilitator, receiver or conservator, as the beneficiary.

(ii) Identifies the trustee or the paying agent for the insured obligation as the beneficiary.

(E) Contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of that issuer and is in no way contingent upon reimbursement with respect thereto.

(F) Contains an issue date and an expiration date.

(G) Either:

(i) Has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guaranty insurance policy; or

(ii) Provides that the letter of credit shall not expire without 30 days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended or a substitute letter of credit or alternate collateral meeting the requirements of subdivision (e) is not provided.

(H) If the letter of credit is governed by the 1983 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), or any successor revision approved by the commissioner, it shall contain a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 19 of Publication 400 occurs.

(I) Is issued by a bank, trust company, or savings association that meets all of the following criteria:

(i) Is organized and existing under the laws of the United States or any state thereof or, in the case of a banking organization organized under the laws of a foreign country, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organization of Economic Cooperation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

(ii) Has (or is the principal operating subsidiary of a bank holding company that has) a long-term debt rating of at least investment grade.

(iii) Is not a parent, subsidiary or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if that trustee or paying agent is the named beneficiary of the letter of credit.

Collateral shall be deposited with or held by the financial guaranty insurance corporation, held by a trustee or agent for the benefit of the financial guaranty insurance corporation in trust or to perfect a security interest, or held in trust pursuant to the bond indenture or other trust arrangement by a trustee for the benefit of holders of the insured obligations which may be used for the payment of debt service, other insured payments, collateral agent fees and trustee

fees or reimbursement of the financial guaranty insurance corporation on any obligation insured by the corporation. Any such trustee or agent shall be a bank, savings association, depository institution, or other entity acceptable to the commissioner, the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (or any successors thereto), or in the case of banking organizations organized under the laws of a foreign country in addition satisfies the requirements of clauses (i) and (ii) of subparagraph (I) of paragraph (4) of subdivision (e) of Section 12100, and, in each case which has a net worth of at least twenty-five million dollars ($25,000,000). Any such trustee or agent may also be an approved or qualified servicer or originator of the kind of assets which comprise the collateral which maintains in force at all times errors and omissions insurance applicable to the trust or agency activities, including without limitation, a servicer qualified under a federal or state insurance or guaranty program to service loans or mortgage loans.

(f) "Commercial real estate" means income-producing real property other than residential property consisting of less than five units.

(g) "Contingency reserve" means an additional liability reserve established to protect policyholders against the effects of adverse economic cycles or other unforeseen circumstances.

(h) "Financial guaranty insurance corporation" means an insurer transacting financial guaranty insurance.

(i) "Governmental unit" means a state, territory, or possession of the United States of America, the District of Columbia, the country of Canada, a province of Canada, the United Kingdom, a public authority of the United Kingdom, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(j) "Guaranties of consumer debt obligations" means insurance policies indemnifying regulated financial institutions against loss or damage resulting from nonpayment of debts owed to them for extensions of credit to individuals for nonbusiness purposes provided in the normal course of their business. Policies providing that coverage shall contain a provision that all liability terminates upon sale or transfer of the underlying obligation to any transferee that is not an insured of the financial guaranty insurance corporation under a similar policy.

(k) "Industrial development bond" means any security, or other instrument under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a private industrial, commercial, or manufacturing purpose and not guarantied by a governmental unit.

(*l*) "Insurable risk" means that the obligation on an uninsured basis has been determined to be not less than investment grade. With respect to asset-backed securities as defined in subdivision (c), the

determination shall be, based solely on the pool of assets pledged in support of the insured obligation or securing the financial guaranty insurance corporation, without consideration of the creditworthiness of the issuer.

(m) "Investment grade" means that the obligation is rated in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the commissioner, that the obligation, without regard to financial guaranty insurance, has been identified in writing by that rating agency as an insurable risk deemed to be of investment grade quality or that the obligation has been determined to be investment grade (as indicated by a category 1 or 2 rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(n) "Municipal bonds" means municipal obligation bonds and special revenue bonds.

(o) "Municipal obligation bond" means any security, or other instrument, including a state lease but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project or undertaking serving a substantial public purpose, and which is one or more of the following:

(1) Payable from tax revenues, but not tax allocations, within the jurisdiction of the governmental unit.

(2) Payable or guarantied by the United States of America or any agency, department or instrumentality thereof, or by a state housing agency.

(3) Payable from rates or charges (but not tolls) levied or collected in respect of a nonnuclear utility project, public transportation facility (other than an airport facility) or public higher education facility.

(4) With respect to lease obligations, payable from past, present, or future appropriations.

(p) "Reinsurance" means cessions qualifying for credit under Section 12104.

(q) "Security" or "secured" means any of the following:

(1) A deposit at least equal to the full amount of the outstanding principal of the insured obligation.

(2) Collateral, as defined by subdivision (e), at least equal to the full amount of the outstanding principal of the insured obligation or which has a market value or scheduled cash flow which is equal to or greater than the scheduled debt service on the insured obligation.

(3) Property, provided the financial guaranty insurance corporation or the trustee has possession of evidence of the right, title, or authority to claim or foreclose thereon or otherwise dispose of the property for value, the scheduled cash flow from which, or market value thereof, is at least equal to the scheduled debt service on the insured obligation.

(r) "Special revenue bond" means any security or other instrument under which a payment obligation is created, issued by

or on behalf of a governmental unit to finance a project or undertaking serving a substantial public purpose and not payable from the sources enumerated in subdivision (o) or securities which are substantially similar to the foregoing issued by a not-for-profit corporation.

(s) "Total net liability" of a financial guaranty insurance corporation means the aggregate amount of insured unpaid principal, interest, and other monetary payments, if any, of guarantied obligations insured or assumed, less reinsurance and less collateral.

(t) "Utility first mortgage obligation" means an obligation of an issuer secured by a first priority mortgage on property owned or leased by an investor-owned or cooperative-owned utility company.

12101. An insurer may be organized and admitted to transact financial guaranty insurance in the manner prescribed for stock property and casualty insurers by the laws of this state. Except as provided in Section 12118, an insurer shall be required to be licensed to transact financial guaranty insurance in California before it transacts that insurance in this state. An insurer shall become admitted to transact financial guaranty insurance upon making application and complying with all the requirements of the law.

12102. (a) An insurer with a certificate of authority to transact the business of financial guaranty insurance as defined in Section 12100 may also transact the business of surety insurance as defined in Section 105.

(b) An insurer licensed in this state to transact financial guaranty insurance may not transact any other classes of insurance in this state except surety insurance.

(c) An insurer which anywhere transacts or is licensed for any classes other than financial guaranty insurance and surety insurance shall not be eligible for a certificate of authority for the class of financial guaranty insurance in this state, except that an insurer which transacts financial guaranty insurance in another state under the line of credit insurance shall be eligible for such a license.

(d) A financial guaranty insurance corporation may only assume those lines of insurance it is admitted to transact in this state.

(e) After licensure the holder shall continue to comply with the requirements of this section.

12103. Prior to the issuance of a certificate of authority to transact financial guaranty insurance, an insurer shall submit for the approval of the commissioner a plan of operation detailing the types and projected diversification of guaranties that will be issued, the underwriting procedures that will be followed, managerial oversight methods, investment policies, and other matters prescribed by the commissioner including, but not limited to, those necessary to allow the commissioner to make a finding for the purposes of Section 717.

12104. An admitted financial guaranty insurance corporation shall be subject to all of the provisions of this code applicable to property and casualty insurers to the extent that the provisions are

not inconsistent with the provisions of this article.

12205. The filing fee for a certificate of authority or amended certificate of authority to transact financial guaranty insurance shall be five thousand dollars ($5,000).

12106. An admitted financial guaranty insurance corporation's investments in any one entity insured by that corporation shall not exceed 1 percent of its admitted assets as of the end of the prior calendar year except that this limit shall not apply if that entity shall be a United States governmental unit or agency and the investments in the United States governmental unit or agency shall be rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

12107. (a) No insurer shall be issued a license to transact financial guaranty insurance unless it has paid-in capital of at least fifteen million dollars ($15,000,000) and surplus of at least eighty-five million dollars ($85,000,000), and shall at all times thereafter maintain a minimum paid-in capital of fifteen million dollars ($15,000,000) and a minimum surplus of sixty million dollars ($60,000,000).

(b) An insurer licensed in this state and issuing or reinsuring financial guaranty insurance policies in this state prior to January 1, 1991, shall, notwithstanding the provisions of subdivision (a), be deemed to meet the combined paid-in capital and surplus requirements for transacting the financial guaranty insurance business during the period between January 1, 1991, and January 1, 1993, if it has combined capital and surplus of forty-five million dollars ($45,000,000), which includes paid-in capital of at least two million five hundred thousand dollars ($2,500,000).

(c) On and after January 1, 1993, every financial guaranty insurance corporation must fully comply with the condition in subdivision (a) that a minimum paid-in capital of fifteen million dollars ($15,000,000) be held and maintained.

12108. (a) An admitted financial guaranty insurance corporation shall establish and maintain a contingency reserve.

(b) With respect to all financial guaranties written prior to and in force as of July 1, 1989:

(1) The financial guaranty insurance corporation shall establish and maintain a contingency reserve consistent with the requirements applicable for municipal bond insurance policies which were in effect prior to July 1, 1989, in an amount equal to 50 percent of earned premiums on those policies.

(2) To the extent that the financial guaranty insurance corporation's contingency reserves maintained as of July 1, 1989, are less than those required for municipal bond insurance policies pursuant to paragraph (1), the corporation shall have until January 1, 1994, to bring its reserves into compliance.

(c) With respect to financial guaranties of municipal obligation bonds, special revenue bonds and investment grade industrial development bonds written after July 1, 1989:

(1) The financial guaranty insurance corporation shall establish and maintain a contingency reserve in accordance with paragraph (3) of subdivision (d) for all those insured issues in each calendar year for each category listed in paragraph (2) of this subdivision.

(2) The total contingency reserve required shall be the greater of 50 percent of premiums written for each such category or the following amount prescribed for each such category:

(A) Municipal obligation bonds, 0.8 percent of principal outstanding.

(B) Special revenue bonds, 1.2 percent of principal outstanding.

(C) Investment grade industrial development bonds secured by collateral or with a remaining term at the date of insurance of seven years or less and utility first mortgage obligations, 1.4 percent of principal outstanding.

(D) All other investment grade industrial development bonds, 1.6 percent of principal outstanding.

(3) Contributions to the contingency reserve required by this paragraph, equal to one-eightieth of the total reserve required, shall be made each quarter for 20 years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (A) through (D) of subparagraph (2) exceeds the percentages contained in items (A) through (D) when applied against unpaid principal.

(d) With respect to all other financial guaranties written on or after July 1, 1989:

(1) The financial guaranty insurance corporation shall establish and maintain a contingency reserve in accordance with paragraph (3) for all those insured issues in each calendar year for each such category listed in paragraph (2).

(2) The total contingency reserve required shall be the greater of 50 percent of premiums written for each such category or the following amount prescribed for each such category:

(A) Investment grade obligations, secured by collateral, or with a remaining term at the date of insurance of seven years or less, 1.2 percent of principal outstanding.

(B) Other investment grade obligations, 1.7 percent of principal outstanding.

(C) Noninvestment grade obligations secured by collateral, 2.5 percent of principal outstanding.

(D) Other noninvestment grade obligations, 3.0 percent of principal outstanding.

(3) Contributions to the contingency reserve required by subparagraphs (A) and (B) of paragraph (2), equal to one-sixtieth of the total reserve required, shall be made each quarter for 15 years, and contributions to the contingency reserve required by subparagraphs (C) and (D) of paragraph (2), equal to one-fortieth of the total reserve required, shall be made each quarter for 10 years provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in subparagraphs (A)

through (D) of paragraph (2) exceeds the percentages contained in subparagraphs (A) through (D) when applied against unpaid principal.

(e) Contingency reserves required in subdivisions (b), (c), and (d) may be established and maintained net of reinsurance, provided that the reinsurance agreement requires that the reinsurer shall, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the financial guaranty insurance corporation reduces its contingency reserve.

(f) The contingency reserves may be released thereafter in the same manner in which they were established and withdrawals therefrom, to the extent of any excess, may be made from the earliest contributions to such reserves remaining therein:

(1) With the prior written approval of the commissioner, if the actual incurred losses for the year, in the case of the categories of guaranties subject to subdivision (c) exceeds 35 percent of earned premiums, or in the case of the categories of guaranties subject to subdivision (d) exceed 65 percent of earned premiums.

(2) Upon 30 days prior written notice to the commissioner, provided that the contingency reserve has been in existence for 40 quarters, for reserves subject to subdivision (c), and 30 quarters, for reserves subject to subdivision (d), upon demonstration that the amount carried is in excess of required amounts or excessive in relation to the financial guaranty insurance corporation's outstanding obligations.

(3) A financial guaranty insurance corporation may invest the contingency reserve in tax and loss bonds or similar securities purchased pursuant to Section 832(e) of the Internal Revenue Code (or any successor provision), only to the extent of the tax savings resulting from the deduction for federal income tax purposes of a sum equal to the annual contributions to the contingency reserve. The contingency reserve shall otherwise be invested only in classes of securities or types of investments specified in Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1.

12109. (a) In addition to the contingency reserve, the case basis method or other method as may be prescribed by the commissioner shall be used to determine loss reserves, which shall include a reserve for claims reported and unpaid net of collateral. A deduction from loss reserves shall be allowed for the time value of money by application of a discount rate equal to the average rate of return on the admitted assets of the financial guaranty insurance corporation as of the date of the computation of that reserve. The discount rate shall be adjusted at the end of each calendar year.

In addition a reserve component for incurred but not reported claims shall be reasonably estimated if deemed necessary by the financial guaranty insurance corporation, or following an examination or actuarial analysis, by the commissioner.

(b) Except as otherwise permitted by the commissioner, no deduction shall be made for anticipated salvage in computing case basis loss reserves, unless that salvage is held by or under the control of the financial guaranty insurance corporation and would qualify as an admitted asset under Section 1100 and Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1, or unless that salvage constitutes or is secured by a clean, irrevocable letter of credit which is approved by the commissioner or complies with the definition of a letter of credit provided in subdivision (e) of Section 12100.

(c) If the insured principal and interest on a defaulted issue of obligations exceed 10 percent of the financial guaranty insurance corporation's capital, surplus, and contingency reserves, its reserve so established shall be supported by a report from an independent source acceptable to the commissioner.

12110. An unearned premium reserve shall be established and maintained net of reinsurance with respect to all financial guaranty premiums. Where financial guaranty insurance premiums are paid on an installment basis, an unearned premium reserve shall be established and maintained, net of reinsurance, computed on a monthly pro rata basis. All other financial guaranty insurance premiums written shall be earned in proportion with the expiration of exposure, or by such other method as may be prescribed or approved by the commissioner.

12111. An admitted financial guaranty insurance corporation shall adopt procedures reasonably calculated to ensure, to the extent it is commercially feasible for the financial guaranty insurance corporation, that any prospectus which discloses that a policy of financial guaranty insurance has been issued also discloses that in the event the financial guaranty insurance corporation were to become insolvent, any claims arising under the policies of financial guarantee insurance are excluded from coverage by the California Insurance Guaranty Association, established pursuant to Article 15.2, (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

12112. (a) Except as provided in Section 12118, financial guaranty insurance may be transacted in this state only by an insurer admitted to transact financial guaranty insurance.

(b) The following guaranties are permissible:

(1) Financial guaranty insurance shall be written only to insure timely payment of contractual obligations, including principal and interest, purchase obligations, dividends, or any other payment obligation, however characterized of the following:

(A) Municipal obligation bonds.

(B) Special revenue bonds.

(C) Industrial development bonds.

(D) Corporate obligations.

(E) Partnership obligations.

(F) Asset-backed securities, trust certificates and trust obligations other than mortgage-backed securities secured by mortgages on real property which are insurable by a mortgage guaranty insurer, unless:

(i) The mortgages with loan-to-value ratios in excess of 80 percent are insured by mortgage guaranty insurers authorized under Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 or mortgage guaranty insurers licensed under the laws of any other state if that insurer has a claims paying rating of investment grade from a securities rating agency acceptable to the commissioner; or

(ii) Additional mortgages or other collateral, with principal balances at least equal to the coverage that would otherwise be provided by those mortgage guaranty insurers in accordance with item (i) of this subparagraph are pledged as additional support for the asset-backed securities.

(G) Installment purchase agreements executed as a condition of sale.

(H) Consumer debt obligations.

(I) Utility first mortgage obligations.

(J) Any other debt instrument or monetary obligation that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

12113. An admitted financial guaranty insurance corporation shall keep copies of all relevant materials prepared by the insurer or used in the initial underwriting or ongoing monitoring of insured risk; all relevant documents pertaining to changes in the credit risk or performance of the insured on the obligation, and all materials pertaining to the examination of the condition of collateral, assets, or other security; and any other materials requested by the commissioner. All those materials shall be maintained for the entire period during which the insurance is in force and shall be available for examination upon request of the commissioner by the commissioner or by any rating agency approved by the commissioner.

12114. (a) At least 95 percent of a financial guaranty insurance corporation's outstanding total net liability on the kinds of obligations enumerated in paragraph (1) of subdivision (b) of Section 12112 shall be investment grade.

(b) The financial guaranty insurance corporation shall at all times maintain capital, surplus, and contingency reserve in the aggregate no less than the sum of the following:

(1) 0.3333 percent of the total net liability under guaranties of municipal bonds and utility first mortgage obligations.

(2) 0.6666 percent of the total net liability under guaranties of investment grade asset-backed securities.

(3) 1.0 percent of the total net liability under guaranties, secured by collateral or having a term of seven years or less of:

(A) Investment grade industrial development bonds, and

(B) Other investment grade obligations.

(4) 1.5 percent of the total net liability under guaranties of other investment grade obligations.

(5) 2.0 percent of the total net liability under guaranties of:

(A) Noninvestment grade consumer debt obligations, and

(B) Noninvestment grade asset-backed securities.

(6) 3.0 percent of the total net liability under guaranties of noninvestment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of 80 percent or less.

(7) 5.0 percent of the total net liability under guaranties of other noninvestment grade obligations.

(8) If the amount of collateral required by paragraph (3) of subdivision (c) of Section 12114 is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in paragraph (4) of subdivision (e) of Section 12114.

(9) Additional surplus determined by the commissioner to be adequate to support the writing of surety insurance if the financial guaranty insurance corporation has been admitted to transact surety insurance as authorized by subdivision (a) of Section 12102.

12115. A financial guaranty insurance corporation admitted to transact financial guaranty insurance in this state shall limit its exposure to loss, net of collateral and reinsurance, as follows:

(a) For municipal obligation bonds and special revenue bonds:

(1) The insured average annual debt service with respect to any one entity and backed by a single revenue source may not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(2) The insured unpaid principal issued by a single entity and backed by a single revenue source may not exceed 75 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(b) For each issue of asset-backed securities issued by a single entity, the lesser of:

(1) Insured average annual debt service; or

(2) Insured unpaid principal (reduced by the extent to which the unpaid principal of the supporting assets exceeds the insured unpaid principal) divided by nine; shall not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve, provided that no asset in the pool supporting the asset-backed securities exceeds the single risk limits prescribed in subdivision (e) of Section 12115 if directly guarantied; and provided further that, if the issuer of such insured asset-backed securities is a special purpose corporation, trust or other entity and that issuer shall have indebtedness outstanding with respect to any other pool of assets, either such other indebtedness shall be entitled to the benefits of a financial guaranty policy of the same financial guaranty insurance corporation, or such other indebtedness shall (A) be fully subordinated to the insured obligation, with respect to, or be

nonrecourse with respect to, the pool of assets that supports the insured obligation, (B) be nonrecourse to the issuer other than with respect to the asset pool securing such other indebtedness and proceeds in excess of the proceeds necessary to pay the insured obligation ("excess proceeds") and (C) not constitute a claim against the issuer to the extent that the asset pool securing such other indebtedness or excess proceeds are insufficient to pay such other indebtedness.

(c) For obligations issued by a single entity and secured by commercial real estate, and not meeting the definition of asset-backed securities, the insured unpaid principal less 50 percent of the appraised value of the underlying real estate shall not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(d) For utility first mortgage obligations, the insured average annual debt service shall not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(e) For all other financial guaranties, the insured unpaid principal for any one entity and backed by a single revenue source may not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

12116. (a) If an admitted financial guaranty insurance corporation at any time exceeds any limitation prescribed by subdivision (a) or (b) of Section 12114 or Section 12115, the corporation shall immediately notify the commissioner in writing. Upon receipt of the written notification, or independent of its receipt, the commissioner may issue an order to show cause why the financial guaranty insurance corporation should not cease transacting financial guaranty insurance business. If the commissioner issues such an order, the commissioner shall serve notice of hearing with the order to the financial guaranty insurance corporation stating the time and place therefor, and the conduct, condition or grounds upon which the commissioner has made the order. The hearing shall occur not less than 20 nor more than 30 days after notice is served. At the hearing, the burden to show cause why the financial guaranty insurance corporation should not cease transacting new financial guaranty insurance shall be borne solely by the financial guaranty insurance corporation.

(b) If the commissioner does not issue an order pursuant to subdivision (a) upon receiving written notice, the financial guaranty insurance corporation shall, within 30 days after the limitations are breached, submit a written plan to the commissioner detailing the steps that it will take or has taken to reduce its exposure to loss to no more than the amounts permitted by subdivisions (a) and (b) of Sections 12114 and Section 12115. If, after review of the written plan, the commissioner determines that the corporation has not presented reasonable steps to reduce its exposure to loss to not more than the permitted amounts, the commissioner may issue an order to show

cause following the same procedures as prescribed in subdivision (a).

(c) If, after notice and hearing pursuant to subdivision (a) or (b), the commissioner determines that the financial guaranty insurance corporation has exceeded any limitation prescribed by subdivision (a) or (b) of Section 12114 or Section 12115, the commissioner may order the corporation to cease transacting any new financial guaranty insurance business until its exposure to loss not longer exceeds these limitations.

(d) The provisions of this section shall in no way limit the stop order power of the commissioner under any other section.

12117. A financial guaranty insurance corporation shall not be deemed in violation of any limitation prescribed by Section 12115 with respect to any financial guaranty insurance outstanding prior to January 1, 1991, if the financial guaranty insurance corporation was in compliance with the applicable single risk limit in effect in this state at the time that the financial guaranty insurance policy was issued. If the financial guaranty insurance corporation was not so in compliance, it shall comply with the limitations prescribed by Section 12115 no later than January 1, 1994.

12118. An admitted insurer transacting financial guaranty insurance in this state but which is not admitted to transact, financial guaranty insurance in this state shall be subject to all the provisions of this article and:

(a) May continue to write financial guaranties of the type authorized by subdivision (b) of Section 12112 as follows:

(1) For a period not to exceed five years from January 1, 1991, provided that by July 1, 1991, application shall be made to the commissioner to organize or admit a financial guaranty insurance corporation, controlled by or under common control with that insurer, which financial guaranty insurance corporation, once admitted, shall immediately assume all of the financial guaranty insurance in force on the books of the insurer which was written on or after January 1, 1991.

(2) In the case of an insurer transacting only financial guaranty insurance prior to January 1, 1991, which would comply with all of the requirements for admission as a financial guaranty insurance corporation under this article and which has made application, and has paid the filing fee of five thousand dollars ($5,000) required by Section 12105 to amend its current certificate of authority to financial guaranty insurance by no later than March 1, 1991, such insurer may continue to write financial guaranty insurance until such time as the commissioner issues or denies the amended certificate of authority or the application is otherwise terminated.

(b) Shall, if it does not make application for an amended certificate of authority to transact the business of financial guaranty insurance pursuant to paragraph (1) of subdivision (a), cease writing any new financial guaranty insurance by no later than July 1, 1991. An insurer subject to this paragraph may do one or more of the following:

(1) Reinsure its net in-force business with an admitted financial guaranty insurance corporation.

(2) Subject to the prior approval of its domiciliary commissioner and the commissioner of this state, reinsure all or part of its net in-force business in accordance with the requirements of paragraph (3) of subdivision (a) of Section 12121, except that subparagraphs (B), (D), (E), and (F) of paragraph (3) shall not be applicable. The assuming insurer shall maintain reserves for the reinsured business in the manner applicable to the ceding insurer under paragraph (2) of subdivision (a) of Section 12121.

(3) Thereafter continue the risks then in force and, with 30 days prior written notice to its domiciliary commissioner, write new financial guaranty policies provided the writing of the policies is reasonably prudent to mitigate either the amount of or possibility of loss in connection with business written prior to January 1, 1991. However, an insurer shall receive the prior approval of its domiciliary commissioner and the commissioner of this state before writing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss.

(c) Shall, for all guaranties in force prior to January 1, 1991, including those that fall under the definition of financial guaranty insurance contained in subdivision (a) of Section 12100, be subject to the contingency reserve, reserves for loss and loss adjustment expenses, and unearned premium reserve requirements applicable for municipal bond insurance policies which were in effect prior to July 1, 1989, or January 1, 1991, as appropriate. To the extent that the insurer's contingency reserves maintained as of the effective date of this article are less than those required under paragraph (1) of subdivision (b) of Section 12108, the insurer shall have until January 1, 1994, to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in net total liabilities resulting from reinsurance, provided that the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released and, in addition, a part of the reserve may be released with the approval of the commissioner upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations.

(d) Shall be subject to the reserve requirements applicable to financial guaranty insurance corporations, for business transacted on or after January 1, 1991.

12119. Policy forms and any amendments thereto shall be filed with the commissioner within 30 days after their use in this state by the financial guaranty insurance corporation.

(a) Every policy shall provide that there shall be no acceleration of payments due under the policy with respect to guarantied obligations except at the option of the financial guaranty insurance corporation.

(b) Every policy shall contain a statement that in the event the insurer were to become insolvent, any claims arising under a policy

of financial guaranty insurance are excluded from coverage by the California Insurance Guaranty Association, established pursuant to Article 15.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(c) The commissioner may prescribe additional minimum policy provisions determined by the commissioner to be necessary or appropriate to protect policyholders, claimants, obligees, or indemnitees.

12120. An admitted financial guaranty insurance corporation with respect to financial guaranty insurance rates, shall not be subject to Sections 1861.01 and 1861.05, except that financial guaranty insurance rates shall not be excessive, inadequate, or unfairly discriminatory or otherwise in violation of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1.

12121. (a) For financial guaranty insurance that takes effect on or after January 1, 1991, an insurer authorized to transact financial guaranty insurance shall receive credit for reinsurance as an asset or as a reduction from liabilities only if the reinsurance is subject to an agreement that, for its stated term and with respect to any such reinsured financial guaranty insurance in force, the reinsurance agreement may only be terminated or amended if one or more of the following applies:

(1) At the option of the reinsurer or the ceding insurer if the reinsurance agreement provides that the liability of the reinsurer with respect to policies in effect at the date of termination shall continue until the expiration or cancellation of each such policy.

(2) With the consent of the ceding company, if the reinsurance agreement provides for a cutoff of the reinsurance in force as of the date of termination.

(3) At the discretion of the commissioner acting as rehabilitator, liquidator, or receiver of the ceding or assuming insurer, and only if the reinsurance is placed with one of the following:

(A) Another financial guaranty insurance corporation admitted pursuant to this article to transact financial guaranty insurance which may be under common control with the ceding financial guaranty insurer or financial guaranty corporation, but which does not own, and is not owned by, in whole or in part, directly or indirectly, the ceding financial guaranty insurer or financial guaranty insurance corporation.

(B) Another financial guaranty insurance corporation admitted pursuant to this article which does own, or is owned by, in whole or in part, directly or indirectly, the ceding financial guaranty insurer or financial guaranty insurance corporation provided that (i) the value of the ownership interest in either case does not exceed the greater of (I) 35 percent of its combined capital and surplus or (II) 50 percent of the excess of its surplus over its liabilities and capital and (ii) the financial guaranty insurance corporation providing the reinsurance is rated at the time of cession and thereafter in one of the two top generic rating classifications by a securities rating agency

acceptable to the commissioner.

(C) An insurer admitted to transact surety insurance but not financial guaranty insurance pursuant to this article, if the insurer meets all of the following criteria:

(i) Has and maintains combined captial and surplus of at least fifty million dollars ($50,000,000).

(ii) Establishes and maintains the reserves required in Section 12101, except that if the reinsurance agreement is not pro rata the contribution to the contingency reserve shall be equal to 50 percent of the quarterly earned insurance premium.

(iii) Complies with the provisions of subdivision (d) of Section 12102, except that its maximum aggregate assumed total net liability shall be one-half that permitted for a financial guaranty insurance corporation. For the purpose of determining compliance with this clause, the assuming reinsurer, unless at the time of cession and thereafter it is rated in one of the two top generic rating classifications by a securities rating agency acceptable to the commissioner, shall be limited to using 10 percent of its capital and surplus in making this calculation.

(iv) Complies with the provisions of Section 12115.

(v) If the insurer is an affiliate, parent, or subsidiary of the financial guaranty insurance corporation, the affiliate, parent, or subsidiary shall not assume a percentage of the corporation's total liability in excess of its percentage of equity interest in the corporation.

(vi) Assumes, together with all other reinsurers subject to this paragraph, less than 50 percent of the total liabililty for all its business after deducting any reinsurance placed with another financial guaranty insurance corporation.

(4) A nonadmitted insurer transacting only financial guaranty insurance as is or would be permitted by this article and that otherwise complies with the provisions of paragraph (1) or (2) in an amount not exceeding the liabilities carried by the ceding financial guaranty insurance corporation and in compliance with the requirements of subdivision (b) of Section 922.4 or subdivision (a) of Section 922.5, as applicable.

(5) A nonadmitted insurer not transacting only financial guaranty insurance as is or would be permitted by this article and that complies with the provisions of clauses (i), (iii), (v), and (vi) of subparagraph (C) of paragraph (3) in an amount not exceeding the liabilities carried by the ceding financial guaranty insurance corporation and in compliance with the requirements of subdivision (b) or (c) of Section 922.4 or subdivision (a) or (c) of Section 922.5, as applicable.

(b) In determining whether the financial guaranty insurance corporation meets the limitations imposed by Section 12115, in addition to credit for other types of qualifying reinsurance, the financial guaranty insurance corporation's aggregate risk may be reduced to the extent of the limit for aggregate reinsurance but, in

no event, in an amount greater than the amount of the aggregate risk that will become due during the unexpired term of such reinsurance agreement in excess of the financial guaranty insurance corporation's retention pursuant to such reinsurance agreement.

12122. No insurer authorized to transact financial guaranty insurance shall pay any commission to or make any gift of money, property, or other valuable thing to any employee, agent, or representative of any issuer of any debt instrument or other monetary obligation of any kind which may be insured pursuant to this article or to any trustee or agent of any such issuer, or to any employee, agent, or representative of any underwriter of any issuer of those debt instruments or monetary obligations as an inducement to the purchase of that insurance, nor may, at any time there is in force a policy issued by that insurer insuring those debt instruments or monetary obligations, any employee, agent, or representative of the issuer or underwriter receive from or on behalf of that insurer any such payment or gift.

SEC. 7. The Legislature finds and declares that Section 4 of this act furthers the purpose of Proposition 103 by clarifying the applicability of the proposition to credit insurance.

SEC. 8. This act applies to rates for credit insurance and financial guaranty insurance on and after November 8, 1988. This act shall not relieve any insurer of the obligations set forth in Section 12979 of the Insurance Code arising prior to January 1, 1991.

CHAPTER 1033

An act to add Chapter 5 (commencing with Section 7370) to Part 3 of Division 5 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Chapter 5 (commencing with Section 7370) is added to Part 3 of Division 5 of the Labor Code, to read:

CHAPTER 5. CRANES

Article 1. Permits for Tower Cranes

7370. (a) The Legislature finds and declares that recent statewide spot inspections of cranes have uncovered a pattern of numerous safety violations so serious and pervasive that safety inspections shall be a continuing priority with regard to all tower cranes in the state.

7371. As used in this chapter, the following definitions shall apply:

(a) "Crane" means a machine for lifting or lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. It may be driven manually or by power and may be a fixed or a mobile machine, but does not include stackers, lift trucks, power shovels, backhoes, excavators, or concrete pumping equipment.

(b) "Tower crane" means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

(c) "Mobile tower crane" means a tower crane which is mounted on a crawler, truck, or similar carrier for travel or transit.

(d) "Crane employer" means an employer who is responsible for the maintenance and operation of a tower crane.

(e) "Certificating agency" shall have the same definition as in Section 4885 of Title 8 of the California Code of Regulations.

7372. (a) The division shall employ safety engineers trained to inspect tower cranes.

(b) The division shall establish a safety inspection program for all tower cranes operated in the state. This safety program shall include:

(1) Safety inspection of tower cranes twice a year.

(2) Increased penalties for the violation of tower crane safety orders and standards.

(3) Permit fees as described in Section 7373.

7373. (a) No tower crane shall be operated at any worksite unless an employer obtains a permit from the division. The division shall conduct an investigation for purposes of issuing a permit in an expeditious manner. If the division does not issue a permit within 10 days after being requested to do so by a crane employer, the crane employer may operate the crane without a permit.

(b) The division shall set a fee to be charged for these permits in an amount sufficient to cover the cost of funding the issuance of the permits and the safety engineers as provided by subdivision (a) of Section 7372.

(c) The permit for a fixed tower crane shall be valid for the period of time that the tower crane is fixed to the site.

(d) The permit for a mobile tower crane shall be valid for one calendar year.

7374. (a) The division may suspend or revoke the permit of a crane where the employer engages in gross negligence, gross incompetence, or willful or repeated disregard of any occupational safety standard or order involving the crane.

(b) The permit of the crane shall be suspended or revoked for a six-month period for first-time suspensions or revocations, and for a one-year period for each subsequent suspension or revocation. The division shall establish a suspension and revocation hearing procedure and appeal process.

Article 2. Certification

7375. (a) The division shall promulgate regulations for the certification of all cranes and derricks used in lifting service, exceeding three tons rated capacity. Tower cranes shall be certified annually and whenever they are erected on a new site.

(b) These regulations shall specify the procedure for licensing the certificating agencies or agents to conduct certification inspections, and shall establish specific criteria for licensure as a certifier, including a written examination.

(c) No individual may certify a crane in which the individual or his or her employer has a direct or indirect financial interest, nor may an individual certify equipment that belongs to his or her employer. An individual may not certify equipment or devices that it has manufactured or help manufacture, if the equipment is owned by his or her employer. However, this subdivision shall not prohibit the licensure of certifiers who are employed by insurance carriers who insure the specific crane.

(d) The certificating agency shall attest that it tested or examined the device or equipment and found it to meet the requirements of the division.

(e) The certificating agency shall notify the division of any deficiencies found during the crane certification inspection. A certificate shall not be issued until all deficiencies are corrected.

7376. (a) The division shall suspend or revoke a license to certify for the following reasons:

(1) Gross negligence, gross incompetency, a pattern of incompetence, or fraud in the certification of a crane.

(2) Willful or deliberate disregard of any occupational safety standard while certifying a crane.

(3) Misrepresentation of a material fact in applying for, or obtaining, a license to certify under this chapter.

(4) Upon a showing of good cause.

(b) The period of suspension or revocation shall be for six months for a first suspension or revocation, and one year for each subsequent suspension or revocation. The certificating agency shall obtain a new license from the division following a suspension or revocation. The division shall establish a hearing procedure and an appeal process for license suspensions and revocations.

7377. Revocation of a license to certify may be appealed to the Director of Industrial Relations.

7378. A licensed certifier who fraudulently certifies that a crane is in compliance with the criteria established by the division under subdivision (a) of Section 7375 is guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or both.

7379. It shall be a misdemeanor for an individual to engage in the certification of a crane as specified in this chapter if that individual

is not licensed pursuant to this chapter. Any violation of this section shall be punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or both.

7380. The division may collect fees for the examination and licensing of crane certifiers as necessary to cover the actual costs, including administrative costs. All fees collected by the division under this chapter shall be paid into the General Fund.

7381. (a) Notwithstanding Sections 6319 and 6425, if serious injury or death is caused by any serious or willful repeated violation of a crane standard, order, or special order, or by any failure to correct a serious violation of a crane standard, order, or special order within the time specified for its correction, the employer shall be assessed a civil penalty in an amount equal to double the maximum penalty allowable for each violation contributing to the injury or death.

(b) Notwithstanding any provision of this division, any employer who violates any tower crane standard, order, or special order, if that violation is a serious violation, shall be assessed a civil penalty of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) for each serious violation. The penalty shall not be reduced for any of the reasons listed in Section 6319.

7382. No person shall install or dismantle a tower crane, or increase the height of a crane, known in the construction trade as "jumping or climbing a crane," without a safety representative of the crane manufacturer, distributor, or a representative of a licensed crane certifier being present on site for consultation during the procedure. The standards board shall adopt a regulation making failure to provide the designated safety representative a serious violation of a safety order. Local governmental entities may restrict the hours during which these procedures may be performed.

7383. (a) The division shall require all crane employers to disclose all of their previous business identities within the previous 10 years. The disclosure shall be made to the division on forms provided by the division. The division shall maintain the confidentiality of this information.

(b) The division shall consider the violations of safety and health orders and standards of the previous business identities when assessing penalties against a crane employer for current violations.

(c) For purposes of this section "business identities" means current and previous business affiliations in the construction industry which involve the use of cranes. These shall include, but not be limited to, fictitious business names and corporate names.

(d) The purpose of this section is to enable the division to get a complete safety record of crane employers when assessing penalties for the violation of safety orders.

7384. The division shall prepare an annual report concerning revenues obtained from all funding sources and expenditures. The division shall file the report with the Legislative Analyst, the Joint

Legislative Audit Commitee, the Department of Finance, and the appropriate policy committees of the Legislature.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 1034

An act to amend Section 40701 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 40701 of the Health and Safety Code is amended to read:

40701. A district shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To take by grant, purchase, gift, devise, or lease, to hold, use, and enjoy, and to lease or dispose of any real or personal property within or without the district necessary to the full exercise of its powers.

(e) To lease, sell, or dispose of any property, or any interest therein, whenever, in the judgment of the district board, such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

(f) To cooperate and contract with any federal, state, or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of the purposes of this division.

(g) To require any owner or operator of any air pollution emission source, except a noncommercial vehicular source, to provide (1) a description of the source, and (2) disclosure of the data necessary to estimate the emissions of pollutants for which ambient air quality

standards have been adopted, or their precursor pollutants, so that the full spectrum of emission sources can be addressed equitably pursuant to Section 40910.

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 1035

An act to amend Sections 25103 and 25140 of the Corporations Code, and to add Sections 262, 8009.5, 14258, and 18395 to the Financial Code, relating to financial institutions.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 25103 of the Corporations Code as amended by Chapter 40 of the Statutes of 1990, is amended to read:

25103. The following transactions are exempted from the provisions of Section 25110 and Section 25120:

(a) Any negotiations or agreements prior to general solicitation of shareholders' approval, and subject to such approval, of a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or a merger, consolidation, or sale of corporate assets in consideration of the issuance of securities.

(b) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities, unless the holders of at least 25 percent of the outstanding shares or units of any class of securities which will be directly or indirectly affected substantially and adversely by such change have addresses in this state according to the records of the issuer.

(c) Any exchange incident to a merger, consolidation, or sale of corporate assets in consideration of the issuance of securities of another corporation, unless at least 25 percent of the outstanding shares of any class, any holders of which are to receive securities in the exchange, are held by persons who have addresses in this state, according to the records of the corporation of which they are shareholders.

(d) For the purposes of subdivision (b) and subdivision (c) of this

section, (1) any securities held to the knowledge of the issuer in the names of broker-dealers or nominees of broker-dealers and (2) any securities controlled by any one person who controls directly or indirectly 50 percent or more of the outstanding securities of that class shall not be considered outstanding. The determination of whether 25 percent of the outstanding securities are held by persons having addresses in this state, for the purposes of subdivision (b) and subdivision (c) of this section, shall be made as of the record date for the determination of the security holders entitled to vote on or consent to the action, if approval of those holders is required, or if not as of the date of directors' approval of that action.

(e) Any change (other than a stock split or reverse stock split) in the rights, preferences, privileges, or restrictions of or on outstanding shares, except the following if they materially and adversely affect any class of shareholders: (1) to add, change, or delete assessment provisions; (2) to change the rights to dividends thereon; (3) to change the redemption provisions; (4) to make them redeemable; (5) to change the amount payable on liquidation; (6) to change, add, or delete conversion rights; (7) to change, add, or delete voting rights; (8) to change, add, or delete preemptive rights; (9) to change, add, or delete sinking fund provisions; (10) to rearrange the relative priorities of outstanding shares; (11) to impose, change, or delete restrictions upon the transfer of shares in the articles of incorporation or bylaws; (12) to change the right of shareholders with respect to the calling of special meetings of shareholders; and (13) to change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation organized primarily to provide services or facilities to its shareholders or members. Changes in the rights, preferences, privileges, or restrictions of or on outstanding shares do not materially and adversely affect any class of shareholders within the meaning of this subdivision if they arise from (i) the addition to articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the conversion of an existing corporation to a close corporation pursuant to subdivision (b) of Section 158, (ii) the deletion from the articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the voluntary termination of close corporation status pursuant to subdivisions (c) and (e) of Section 158, (iii) the involuntary cessation of close corporation status pursuant to subdivision (e) of Section 158, or (iv) the termination of a shareholders' agreement pursuant to subdivision (b) of Section 300.

(f) Any stock split or reverse stock split, except the following: (1) any stock split or reverse stock split if the corporation has more than one class of shares outstanding and the split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions; (2) any stock split of a stock which is traded in the market and its market price as of the date of directors' approval of the stock split adjusted to give effect to the split was less

than two dollars ($2) per shares; and (3) any reverse stock split if the corporation has the option of paying cash for any fractional shares created by such reverse split and as a result of such action the proportionate interests of the shareholders would be substantially altered. Any shares issued upon a stock split or reverse stock split exempted by this subdivision shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(g) Any change in the rights of outstanding debt securities, except the following if they substantially and adversely affect any class of securities: (1) to change the rights to interest thereon; (2) to change their redemption provisions; (3) to make them redeemable; (4) to extend the maturity thereof or to change the amount payable thereon at maturity; (5) to change their voting rights; (6) to change their conversion rights; (7) to change sinking fund provisions; and (8) to make them subordinate to other indebtedness.

(h) An exchange incident to a merger or sale of corporate assets in consideration of the issuance of one-class voting common stock of another corporation, which exchange meets each of the following conditions:

(1) The acquiring corporation (or the parent corporation if its wholly owned subsidiary is the acquiring corporation) has earned a majority of its revenue from its operations rather than investments during each of the last four fiscal quarters prior to the date of the offer of the acquiring corporation's common stock.

(2) The corporation to be acquired has 20 or fewer security holders, all of which are equity security holders, including equity security holders not in this state.

(3) All equity security holders of the corporation to be acquired have either (A) preexisting personal or business relationship with the acquiring corporation or any of its officers, directors, or controlling persons or (B) by reason of their business or financial experience, or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the acquiring corporation or any affiliate or selling agent of the acquiring corporation, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interest in connection with the transaction.

(4) All equity security holders of the corporation to be acquired have consented in writing to the transaction, and each equity security holder of the corporation to be acquired has represented that the acquisition of the common stock in the transaction is for the equity security holder's own account (or a trust account if the equity security holder is a trustee) and not with a view to or for sale in connection with any distribution of the common stock.

(5) The offer and sale of the acquiring corporation's common stock is not accomplished by the publication of any advertisement. The distribution of information necessary to solicit approval of the transaction from the equity security holders of the corporation to be

acquired shall not be deemed to be the publication of any advertisement to the extent that the distribution of information is required by the laws of this state or the applicable laws of any other jurisdiction.

(6) All equity security holders of the corporation to be acquired, other than the acquiring corporation, shall receive as a result of the merger or sale of corporate assets (A) only one-class voting common stock of the acquiring corporation (or parent or subsidiary if that common stock is the consideration offered), (B) only cash, or (C) a combination as determined by the equity security holder of common stock as set forth in subparagraph (A) and cash; each choice at the option of the equity security holder of the corporation to be acquired.

For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one equity security holder of the corporation to be acquired and a partnership, corporation, or other organization which was not specifically formed for the purpose of receiving the security exchanged in reliance upon this exemption, is counted as one equity security holder of the corporation to be acquired.

The commissioner may, by rule, require the acquiring corporation to file a notice of transaction under this section. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An acquiring entity which fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110 or 25120.

SEC. 2. Section 25140 of the Corporations Code is amended to read:

25140. (a) (1) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any qualification of an underwritten offering of securities under Section 25111, 25112 or 25131 or may suspend or revoke any permit issued under Section 25113 or 25122 if he or she finds (A) that the order is in the public interest and (B) that the proposed plan of business of the issuer or the proposed issuance or sale of securities is not fair, just, or equitable, or that the issuer does not intend to transact its business fairly and honestly, or that the securities proposed to be issued or the method to be used in issuing them will tend to work a fraud upon the purchaser thereof.

(2) In the case of an application for or qualification of securities under Section 25111, 25112, or 25131 that is not an underwritten offering of securities, the commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of the qualification unless he or she finds (A) that the stop order is not in the public interest and (B) that the proposed plan of business of the applicant or the proposed issuance of securities is fair, just, and

equitable, that the issuer intends to transact its business fairly and honestly, and that the securities that the issuer proposes to issue or the method to be used in issuing them are not such as will work a fraud upon the purchaser thereof.

(b) The commissioner may refuse to issue a permit under Section 25113 unless he or she finds that the proposed plan of business of the applicant and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities which it proposes to issue and the methods to be used by it in issuing them are not such as, in his or her opinion, will work a fraud upon the purchaser thereof.

(c) The commissioner may refuse to issue a permit under Section 25122 unless he or she finds that the proposed plan of recapitalization or reorganization and the proposed issuance of securities are fair, just, and equitable to all security holders affected.

(d) Notwithstanding the provisions of subdivisions (a) and (b) of this section, the commissioner shall not have authority to issue any stop order or to refuse to issue or to suspend or revoke any permit on the basis that the price at which the security is to be offered is unfair, unjust or inequitable in any case where the security is being publicly offered for cash pursuant to a registration statement under the Securities Act of 1933 and the offering is the subject of a firm commitment underwriting by an underwriter or syndicate of underwriters all of whom are registered under the Securities Exchange Act of 1934. For the purposes of this subdivision a firm commitment underwriting means an underwriting pursuant to which the underwriter or syndicate of underwriters is committed to take up and pay for the securities subject only to the usual or customary conditions, but not including any "market out" or similar condition operative after the time of commencement of the offering. (A condition relating to the suspension of all trading on a national securities exchange, a banking holiday, war, civil insurrection, or the like is not a "market out" or similar condition within the meaning of this subdivision.) Nothing contained in this subdivision shall deny authority to the commissioner to issue a stop order or to refuse to issue or to suspend or revoke a permit because of unreasonable discounts, commissions or other compensation to underwriters, sellers or others, unreasonable promoters' profits or participations or unreasonable amounts or kinds of options.

SEC. 3. Section 262 is added to the Financial Code, to read:

262. (a) The superintendent shall inform the Savings and Loan Commissioner, the Commissioner of Corporations, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The superintendent shall inform the Savings and Loan Commissioner, the Commissioner of Corporations, and other

appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any bank, bank holding company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the superintendent that the information is relevant to the regulatory activities of the other agency.

SEC. 4. Section 8009.5 is added to the Financial Code, to read:

8009.5. (a) The commissioner shall inform the Superintendent of Banks, the Commissioner of Corporations, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The commissioner shall inform the Superintendent of Banks, the Commissioner of Corporations, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any association, holding company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the commissioner that the information is relevant to the regulatory activities of the other agency.

SEC. 5. Section 14258 is added to the Financial Code, to read:

14258. (a) The commissioner shall inform the Superintendent of Banks, the Savings and Loan Commissioner, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The commissioner shall inform the Superintendent of Banks, the Savings and Loan Commissioner, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any credit union, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the commissioner that the information is relevant to the regulatory activities of the other agency.

SEC. 6. Section 18395 is added to the Financial Code, to read:

18395. (a) The commissioner shall inform the Superintendent of Banks, the Savings and Loan Commissioner, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or

an open investigation.

(b) The commissioner shall inform the Superintendent of Banks, the Savings and Loan Commissioner, and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any industrial loan company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the commissioner that the information is relevant to the regulatory activities of the other agency.

CHAPTER 1036

An act to amend Sections 99155 and 99275.5 of, and to add Section 99155.5 to, the Public Utilities Code, relating to transportation.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 99155 of the Public Utilities Code is amended to read:

99155. (a) Each transit operator, whether publicly or privately funded all or in part, nonprofit or profit, which offers reduced fares to senior citizens shall honor the federal Medicare identification card as sufficient identification to receive reduced fares. A transit operator which offers reduced fares to those senior citizens who are less than 65 years old shall also honor the senior citizen identification card issued pursuant to subdivision (b) of Section 13000 of the Vehicle Code.

(b) Each transit operator, whether publicly or privately funded in whole or in part, nonprofit or profit, which offers reduced fares pursuant to subdivision (a) shall also offer reduced fares to handicapped persons, as defined by Section 99206.5, disabled persons, as defined by Section 22511.5 of the Vehicle Code, and disabled veterans, as defined by Section 22511.9 of the Vehicle Code, at the same rate established for senior citizens. A transit operator shall honor the handicapped person, disabled person, or disabled veteran placard identification card issued pursuant to subdivision (d) of Section 22511.5 of the Vehicle Code.

(c) This section also applies to any dial-a-ride, paratransit, or nonfixed route operator which serves the handicapped or disabled, but does not apply to a private, nonprofit entity which serves the handicapped, disabled, or elderly.

(d) Nothing in this section prohibits a transit operator from issuing its own identification card, except that no such card shall be required to be presented in addition to either a federal Medicare

card or a card issued pursuant to subdivision (d) of Section 22511.5 or subdivision (d) of Section 22511.9 of the Vehicle Code, whichever is applicable.

(e) A transit operator, as defined in subdivision (b), which receives funds pursuant to the Mills-Alquist-Deddeh Act (Chapter 4 (commencing with Section 99200)), shall not require that a person requesting transportation be a resident of that transit operator's service area.

SEC. 2. Section 99155.5 is added to the Public Utilities Code, to read:

99155.5. (a) The Legislature intends that dial-a-ride and paratransit services be accessible to handicapped persons, as defined in Section 99206.5. It is intended that transportation service be provided for employment, education, medical, and personal reasons. Transportation for handicapped persons is a necessity, and allows a handicapped person to fully participate in our society.

(b) Each transit operator, profit or nonprofit, which provides, or contracts for the provision of, dial-a-ride or paratransit service for handicapped persons and which receives public funding pursuant to the Mills-Alquist-Deddeh Act (Chapter 4 (commencing with Section 99200)) for that service shall provide the service without regard to either of the following:

(1) Whether the person is a member of a household which owns a motor vehicle.

(2) The place of residence of the person who requests transportation service within the service area of the provider. All persons requesting transportation service in the service area of the provider shall be provided service on the same terms and at the same price that service is provided to other persons residing within the service area of the provider.

(c) Subdivision (b) does not preclude a provider from offering a subscription service, and does not require a reduction in the amount the provider charges other public or private agencies.

(d) Nothing in this section requires any transit operator which provides service to handicapped persons in a manner consistent with subdivision (b) to make those services available outside the operator's established operating service area, or requires the operator to make the presentation of identification a condition to using the service.

(e) A transit operator shall honor any current identification card issued to a handicapped person by another transit operator.

(f) Any person who believes an operator has violated Section 99155 or 99155.5 may file a report of the alleged violation with the transportation planning agency or county transportation commission. Any handicapped person may request the Attorney General to resolve any dispute as to compliance with Section 99155 or this section.

SEC. 3. Section 99275.5 of the Public Utilities Code is amended to read:

99275.5. (a) Claims, for purposes of this article, shall be filed in the same manner as claims are filed for purposes of Article 4 (commencing with Section 99260).

(b) The transportation planning agencies shall adopt criteria, rules, and regulations for the evaluation of claims filed under this article and the determination of the cost effectiveness of the proposed community transit services to be provided under the claims.

(c) Prior to approving a claim filed under this article, the transportation planning agency shall make all of the following findings:

(1) That the proposed community transit service is responding to a transportation need currently not being met in the community of the claimant.

(2) That the service shall be integrated with existing transit services, if appropriate.

(3) That the claimant has prepared an estimate of revenues, operating costs, and patronage.

(4) That the claimant is in compliance with Section 99268.3, 99268.4, 99268.5, or 99268.9, whichever is applicable to it, or with regional, countywide, or county subarea performance criteria, local match requirements, or fare recovery ratios adopted by resolution of the transportation planning agency or the county transportation commission for any or all types of community transit services.

(A) In adopting the performance criteria, local match requirements, or fare recovery ratios, the transportation planning agency or the county transportation commission may adopt the criteria of Section 99268.3, 99268.4, 99268.5, or 99268.9, or any combination or all of them.

(B) If a transportation planning agency or county transportation commission has adopted performance criteria, local match requirements, or fare recovery ratios, the rules and regulations of the agency or commission apply, and Sections 99205.7 and 99241, subdivision (a) of Section 99247, and Section 99268.8 do not apply.

(5) That the claimant is in compliance with Sections 99155 and 99155.5.

(d) A transportation planning agency or county transportation commission shall allocate no funds to a claimant not in compliance with Sections 99155 and 99155.5.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 1037

An act to add Section 1463.24 to the Penal Code, and to amend Section 21113 of the Vehicle Code, relating to the distribution of fines and forfeitures.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 1463.24 is added to the Penal Code, to read:

1463.24. (a) Notwithstanding subdivision (a) of Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, there shall be transferred, once a month, to the housing authority, or the official designated by it to act hereunder, of the city or county, an amount equal to 50 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested or notified by a peace officer with the housing authority and charged with a violation of parking regulations adopted pursuant to subdivision (a) of Section 21113 of the Vehicle Code, which are applicable to parking upon property under the possession or control of the housing authority, and an amount equal to the remaining 50 percent shall be transferred to the general fund of the county.

(b) Notwithstanding subdivision (a) of Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, there shall be transferred, once a month, pursuant to the schedule in subdivision (c), an amount equal to all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested or notified by a peace officer with the housing authority and charged with a violation, committed upon property under the possession or control of the housing authority, of any provision of Division 11 (commencing with Section 21000) of the Vehicle Code, with the exception of a violation of the following provisions:

(1) Chapter 9 (commencing with Section 22500).

(2) Chapter 10 (commencing with Section 22650).

(3) Chapter 11 (commencing with Section 22950).

(4) Chapter 13 (commencing with Section 23250).

(5) Violations for which a person was cited as a pedestrian or while operating a bicycle.

(c) The fines and forfeitures described in subdivision (b) shall be transferred as follows:

(1) Fifty percent to the Housing Authority, or the official designated by it to act hereunder, of the city or county.

(2) Forty-two percent to the General Fund of the City of Los Angeles.

(3) Eight percent to the General Fund of the County of Los

Angeles.

(d) "Housing authority," for the purposes of this section, means a housing authority located within a county with a population of over six million people.

SEC. 2. Section 21113 of the Vehicle Code is amended to read:

21113. (a) No person shall drive any vehicle or animal, nor shall any person stop, park, or leave standing any vehicle or animal, whether attended or unattended, upon the driveways, paths, parking facilities, or the grounds of any public school, state university, state college, unit of the state park system, county park, municipal airport, rapid transit district, transit development board, or any property under the direct control of the legislative body of a municipality, or any state, county, or hospital district institution or building, or any educational institution exempted, in whole or in part, from taxation, or any harbor improvement district or harbor district formed pursuant to Part 2 (commencing with Section 5800) or Part 3 (commencing with Section 6000) of Division 8 of the Harbors and Navigation Code, a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, or state grounds served by the California State Police, or any property under the possession or control of a housing authority formed pursuant to Article 2 (commencing with Section 34240) of Part 2 of Division 24 of the Health and Safety Code, except with the permission of, and upon and subject to any condition or regulation which may be imposed by the legislative body of the municipality, or the governing board or officer of the public school, state university, state college, county park, municipal airport, rapid transit district, transit development board, or state, county, or hospital district institution or building, or educational institution, or harbor district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, or housing authority, or the Director of Parks and Recreation regarding units of the state park system or the state agency with jurisdiction over the grounds served by the California State Police.

(b) Every governing board, legislative body, or officer shall erect or place appropriate signs giving notice of any special conditions or regulations that are imposed under this section and every board, legislative body, or officer shall also prepare and keep available at the principal administrative office of the board, legislative body, or officer, for examination by all interested persons, a written statement of all those special conditions and regulations adopted under this section.

(c) When any governing board, legislative body, or officer permits public traffic upon the driveways, paths, parking facilities, or grounds under their control then, except for those conditions imposed or regulations enacted by the governing board, legislative body, or officer applicable to the traffic, all the provisions of this code relating to traffic upon the highways shall be applicable to the traffic

upon the driveways, paths, parking facilities, or grounds.

(d) With respect to the permitted use of vehicles or animals on property under the direct control of the legislative body of a municipality, no change in the use of vehicles or animals on the property, which had been permitted on January 1, 1976, shall be effective unless and until the legislative body, at a meeting open to the general public, determines that the use of vehicles or animals on the property should be prohibited or regulated.

(e) A transit development board may adopt ordinances, rules, or regulations to restrict, or specify the conditions for, the use of bicycles, motorized bicycles, skateboards, and roller skates on property under the control of, or any portion of property used by, the board.

(f) A public agency, including, but not limited to, the Regents of the University of California and the Trustees of the California State University, may adopt rules or regulations to restrict, or specify the conditions for, the use of bicycles, motorized bicycles, skateboards, and roller skates on public property under the jurisdiction of that agency.

(g) "Housing authority," for the purposes of this section, means a housing authority located within a county with a population of over six million people.

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, 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 1038

An act to amend Sections 11817.3 and 11987.4 of the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 11817.3 of the Health and Safety Code is amended to read:

11817.3. (a) There shall be a single state appropriation from the Budget Act to the department to fund programs and services to alleviate problems related to inappropriate alcohol use as provided for in this part. However, if the state receives additional funds from the federal government after the enactment of the Budget Act, which may be augmented by the Director of Finance to the appropriation described in this section and Section 11987.4 in accordance with the Budget Act, then the department shall determine the amount of those funds to be used for subvention to counties, and shall allocate that amount to counties with approved amended alcohol program plans within 90 days of receipt of the additional funds to support programs and services to alleviate alcohol-related problems as described in this subdivision and pursuant to subdivision (d) of Section 11987.4. The allocation of all funds pursuant to this subdivision shall comply with federal requirements and with any requirements pursuant to Section 28 of the Budget Act.

(b) The requirement set forth in subdivision (a) that the department determine the amount of additional funds to be used for subvention to counties and allocate that amount to counties within 90 days, shall be waived when the 90-day period does not allow sufficient time for completion of the notification period pursuant to Section 28 of the Budget Act.

(c) As used in this section, "approved amended alcohol program plan" means an alcohol program plan amended by a county to describe the county's proposed use of the additional funds, and approved by the department.

SEC. 2. Section 11987.4 of the Health and Safety Code is amended to read:

11987.4. (a) Except as provided in subdivision (b), the net cost of all services specified in the approved county drug program plan shall be financed on the basis of 90 percent state funds and 10 percent county funds except for local hospital inpatient cost, which shall be financed on a basis of 85 percent state funds and 15 percent county funds irrespective of where or by whom the services are provided, except for services to be financed from other public or private sources as indicated in the county drug program plan. Except as

provided in subdivision (b), in counties of less than 100,000 population, the cost requirements for local financial participation are waived for all programs.

(b) The cost of state hospital services shall be financed on the basis of 85 percent state funds and 15 percent county funds, except that in counties with less than 100,000 population, the cost of state hospital services shall be financed on the basis of 90 percent state funds and 10 percent county funds.

(c) The department may reallocate any funds which are not matched by counties 30 days after notification of the Joint Legislative Budget Committee using a letter as prescribed in Section 28 of the Budget Act. However, the reallocated funds shall not be counted into the base allocation.

(d) If the state receives additional funds from the federal government after the enactment of the Budget Act, which may be augmented by the Director of Finance to the appropriation described in this section and Section 11817.3 in accordance with the Budget Act, then the department shall determine the amount of those funds to be used for subvention to counties, and shall allocate that amount to counties with approved amended drug program plans within 90 days of receipt of the additional funds to support programs and services to alleviate drug-related problems as described in this subdivision and pursuant to Section 11817.3. The allocation of all funds pursuant to this subdivision shall comply with federal requirements and with any requirements pursuant to Section 28 of the Budget Act.

(e) The requirement set forth in subdivision (b) that the department determine the amount of additional funds to be used for subvention to counties and allocate that amount to counties within 90 days, shall be waived when the 90-day period does not allow sufficient time for completion of the notification period pursuant to Section 28 of the Budget Act.

(f) As used in subdivision (d), "approved amended drug program plan" means a drug program plan amended by a county to describe the county's proposed use of the additional funds, and approved by the department.

CHAPTER 1039

An act to add Section 20021.11 to the Government Code, relating to retirement.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 20021.11 is added to the Government Code, to read:

20021.11. "County peace officer" shall also include persons employed by the county parks department whose primary responsibility is maintaining the peace and whose duties include law enforcement, emergency medical care first response, or fire suppression and prevention in the following classifications: Park Ranger I, Park Ranger II, Park Ranger III, Senior Park Ranger, and Supervising Park Ranger.

The provisions of this section shall not apply to the employees of any contracting agency nor to any such agency unless and until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board, made as provided in Section 20461.5 or by express provision in its contract with the board.

This section shall only be applicable in county of the 17th class, as defined by Sections 28020 and 28038, as amended by Chapter 1204 of the Statutes of 1971.

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 1040

An act to amend Sections 98 and 98.2 of the Labor Code, relating to labor.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be

allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, provided it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the justice, municipal, or superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, provided it can be shown that proper service was made on the defendant or his or her agent.

SEC. 2. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the justice, municipal, or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable.

(b) If the party seeking review by filing an appeal to the justice, municipal, or superior court is unsuccessful in the appeal, the court

shall determine the costs and reasonable attorneys' fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(c) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(d) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (c), a certified copy of the final order with the clerk of the justice, municipal, or superior court, in accordance with the appropriate rules of jurisdiction, of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered shall have the same force and effect as, and shall be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(e) In order to ensure judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (b) of Section 117.19 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor , unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(f) Notwithstanding subdivision (d), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award which has become final upon good cause appearing therefore and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(g) When a judgment is satisfied in fact, otherwise than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(h) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(i) The judgment creditor, or the Labor Commissioner as assignee

of the judgment creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the judgment which is rendered pursuant to this section.

CHAPTER 1041

An act to amend Sections 16419.1 and 16419.2 of the Government Code, as proposed to be added by Proposition 129 at the November 6, 1990, general election, relating to the California Anti-Drug Superfund.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 16419.1 of the Government Code, as proposed to be added by Proposition 129 at the November 6, 1990, general election, is amended to read:

16419.1. The Controller shall transfer from the General Fund to the California Anti-Drug Superfund those amounts as directed by the Legislature by statute. In the event that the Controller transfers moneys from the General Fund to the California Anti-Drug Superfund prior to January 1, 1991, the Controller shall transfer the unencumbered balance of the superfund to the General Fund on January 1, 1991. Expenditures under this article shall be made from funds appropriated for that purpose by the Legislature in the annual Budget Act or by statute.

SEC. 2. Section 16419.2 of the Government Code, as proposed to be added by Proposition 129 at the November 6, 1990, general election, is amended to read:

16419.2. All money in the California Anti-Drug Superfund upon appropriation by the Legislature in the annual Budget Act or by statute, shall be allocated as follows:

(a) To the Department of Justice to implement the CrackDown Task Force Program specified in Section 15029 of the Government Code, or to match any available federal funds which are to be expended for similar purposes, as follows:

(1) Twenty-two million dollars ($22,000,000) by July 15, 1991.

(2) Twenty-two million eight hundred eighty thousand dollars ($22,880,000) by July 15, 1992.

(3) Twenty-three million seven hundred ninety-five thousand dollars ($23,795,000) by July 15, 1993.

(4) Twenty-four million seven hundred forty-seven thousand dollars ($24,747,000) by July 15, 1994.

(5) Twenty-five million seven hundred thirty-seven thousand dollars ($25,737,000) by July 15, 1995.

(6) Twenty-six million seven hundred sixty-six thousand dollars

($26,766,000) by July 15, 1996.

(7) Twenty-seven million eight hundred thirty-seven thousand dollars ($27,837,000) by July 15, 1997.

(b) To the Controller for allocation to all county sheriffs' departments and city police departments in this state, to be used only for law enforcement and crime prevention activities related to the abuse of controlled substances, to provide added protection for schools and neighborhoods besieged by gangs and drugs, or to match any available federal funds which are to be expended for similar purposes, as determined to be necessary by the sheriffs or chiefs of police of those counties or cities, as follows:

(1) Sixty million dollars ($60,000,000) by January 1, 1991.

(2) One hundred twenty million dollars ($120,000,000) by July 15, 1991.

(3) One hundred twenty-four million eight hundred thousand dollars ($124,800,000) by July 15, 1992.

(4) One hundred twenty-nine million seven hundred ninety-two thousand dollars ($129,792,000) by July 15, 1993.

(5) One hundred thirty-four million nine hundred eighty-four thousand dollars ($134,984,000) by July 15, 1994.

(6) One hundred forty million three hundred eighty-three thousand dollars ($140,383,000) by July 15, 1995.

(7) One hundred forty-five million nine hundred ninety-eight thousand dollars ($145,998,000) by July 15, 1996.

(8) One hundred fifty-one million eight hundred thirty-eight thousand dollars ($151,838,000) by July 15, 1997.

(9) (A) All funds specified in this subdivision shall be distributed to all participating county sheriffs' departments and city police departments based upon the most recent estimates of the population of the departments' service areas, as determined in the manner specified by Section 11005 of the Revenue and Taxation Code. For this purpose, except as specified in subparagraph (B), the estimate of the population of counties shall not include the population of city police department service areas therein.

(B) For a charter city and county, the total annual funds specified in subparagraph (A) which are available to a charter city and county shall be divided equally between the county sheriff's department and the city police department.

(c) To the Controller for allocation to all county boards of supervisors in this state, to be used only for controlled substance treatment and substance-abuse prevention programs (including treatment and substance-abuse prevention in schools), enhancement of probation supervision of offenders with drug-related problems, prosecution and processing of controlled substance offenders, or to match any available federal funds which are to be expended for similar purposes, as determined to be necessary by those county boards of supervisors, as follows:

(1) Forty million dollars ($40,000,000) by January 1, 1991.

(2) Eighty million dollars ($80,000,000) by July 15, 1991.

(3) Eighty-three million two hundred thousand dollars ($83,200,000) by July 15, 1992.

(4) Eighty-six million five hundred twenty-eight thousand dollars ($86,528,000) by July 15, 1993.

(5) Eighty-nine million nine hundred eighty-nine thousand dollars ($89,989,000) by July 15, 1994.

(6) Ninety-three million five hundred eighty-nine thousand dollars ($93,589,000) by July 15, 1995.

(7) Ninety-seven million three hundred thirty-two thousand dollars ($97,332,000) by July 15, 1996.

(8) One hundred one million two hundred twenty-six thousand dollars ($101,226,000) by July 15, 1997.

(9) All funds specified in this subdivision shall be distributed to all participating county boards of supervisors based upon the most recent estimates of the population of the participating counties as determined in the manner specified by Section 11005 of the Revenue and Taxation Code.

(d) To the Controller and the Franchise Tax Board in an amount equal to their costs incurred in connection with their duties under this article as those costs are determined by the Department of Finance.

(e) The funds provided under this article shall not supplant existing funds for substance abuse programs.

SEC. 3. This act shall become operative only if Proposition 129 is approved by the voters at the November 6, 1990, general election.

CHAPTER 1042

An act to amend, add, and repeal Section 6355 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 6355 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 1128 of the Statutes of 1985, is amended to read:

6355. (a) There are exempted from the taxes imposed by this part the gross receipts from the sales in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins which are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange and the storage, use, or other consumption in this state of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins so sold.

(b) A sale in bulk, for purposes of this section, shall be deemed to

have occurred if the amount of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in the transaction totals, in market value, the sum of one thousand dollars ($1,000) or more, or its equivalent.

(c) "Monetized bullion," for purposes of this section, means coins or other forms of money manufactured of gold, silver, or other metal and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation. "Monetized bullion," for purposes of this section, also means gold medallions struck under authority of the American Arts Gold Medallion Act (Title IV of Public Law 95-630).

(d) A sale of monetized bullion, nonmonetized gold or silver bullion, or numismatic coins, for purposes of this section, shall be deemed to be substantially equivalent to a transaction in securities or commodities through a national securities or commodities exchange, if the sale is by or through a person registered pursuant to the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or not required to be registered under the Commodity Exchange Act.

(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. 2. Section 6355 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 1158 of the Statutes of 1983, is repealed.

SEC. 3. Section 6355 is added to the Revenue and Taxation Code, to read:

6355. (a) There are exempted from the taxes imposed by this part the gross receipts from the sales in bulk of monetized bullion which are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange and the storage, use or other consumption in this state of monetized bullion so sold.

(b) A sale in bulk, for purposes of this section, shall be deemed to have occurred if the amount of monetized bullion sold in the transaction totals, in face amount, the sum of one thousand dollars ($1,000) or more, or its equivalent.

(c) "Monetized bullion," for purposes of this section, means coins or other forms of money manufactured of gold, silver, or other metal and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation. "Monetized bullion," for purposes of this section, also means gold medallions struck under authority of the American Arts Gold Medallion Act (Title IV of Public Law 95-630).

(d) A sale of monetized bullion, for purposes of this section, shall be deemed to be substantially equivalent to a transaction in securities or commodities through a national securities or commodities exchange, if the sale is by or through a person registered pursuant to the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or not required to be registered under the Commodity

Exchange Act.

(e) This section shall be deemed declaratory of existing law and not amendatory thereof.

(f) This section shall be operative January 1, 1994.

SEC. 4. 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 or any sales and use tax revenues lost by it under this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 1043

An act to amend Section 1377 of, to amend, repeal, and add Sections 1343, 1345, and 1356 of, and to add Sections 1394.7, 1394.8, and 1396.5 to, the Health and Safety Code, and to add Article 14.8 (commencing with Section 1068) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to health care service plans.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. 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) Except as otherwise provided, 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) A nonprofit corporation formed under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, except that the following sections and regulations adopted under those sections shall apply to those corporations: Section 1341, subdivisions (d) and (f) of Section 1342, Sections 1344 and 1345, Section 1346 excluding subdivision (g), Sections 1351.1 and 1371, Article 6 (commencing with Section 1375.1) excluding Sections 1375.2, 1379, and 1380, Article 7 (commencing with Section 1386) excluding Sections 1388 and 1389, Article 8 (commencing with Section 1390), and Article 9 (commencing with Section 1395) excluding Sections 1399 and 1399.1.

The corporation shall maintain the surplus as required by the Insurance Commissioner, and shall also comply with the financial viability requirements of Section 1375.1.

(B) Nothing in this paragraph shall preclude the Insurance Commissioner from taking any action authorized by the Insurance Code.

(C) Each nonprofit hospital service plan shall apply for licensure under this chapter no later than September 30, 1991.

(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.

(e) This section shall remain in effect only until April 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before April 1, 1993, deletes or extends that date.

SEC. 2. Section 1343 is added to the Health and Safety Code, 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.

(e) This section shall become operative April 1, 1993.

SEC. 3. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance services and out-of-area coverage.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" means any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for such services, in return for a prepaid or periodic charge paid by or on behalf of such subscribers or enrollees.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353, and, when used in a provision referred to in paragraph (3) of subdivision (d) of Section 1343, "licensee" means and "licensed plan" refers to a nonprofit hospital service plan subject to paragraph (3) of subdivision (d) of Section 1343.

(h) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(i) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, public agency, or political subdivision of the state.

(j) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(k) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(*l*) "Solicitor" means any person who engages in the acts defined in subdivision (k) of this section.

(m) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (k) of this section.

(n) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for such services, in return for a prepaid or periodic charge paid by or on behalf of such subscribers or enrollees.

(o) "Subscriber" means the person who is responsible for

payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(p) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(q) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(r) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean such financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

(s) This section shall remain in effect only until April 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before April 1, 1993, deletes or extends that date.

SEC. 4. Section 1345 is added to the Health and Safety Code, to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance services and out-of-area coverage.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" means any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for such

services, in return for a prepaid or periodic charge paid by or on behalf of such subscribers or enrollees.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(i) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, public agency, or political subdivision of the state.

(j) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(k) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(*l*) "Solicitor" means any person who engages in the acts defined in subdivision (k) of this section.

(m) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (k) of this section.

(n) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for such services, in return for a prepaid or periodic charge paid by or on behalf of such subscribers or enrollees.

(o) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(p) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(q) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(r) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean such financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

(s) This section shall become operative April 1, 1993.

SEC. 5. Section 1356 of the Health and Safety Code is amended

to read:

1356. (a) Each plan applying for licensure under this chapter shall pay to the commissioner a nonrefundable application fee in the amount of four thousand dollars ($4,000) or, if the applicant is to offer only one type of specialized plan contract, two thousand five hundred dollars ($2,500) at the time of submission of the application.

(b) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan and each nonprofit hospital service plan described in paragraph (3) of subdivision (d) of Section 1343, shall pay to the commissioner on or before the 15th day of December of each year, as a reimbursement of its share of all costs and expenses, including overhead, reasonably incurred in the administration of this chapter and not otherwise recovered by the commissioner under this chapter or from the General Fund, an amount as estimated by the commissioner for the ensuing year. The amount paid by each plan shall be two thousand five hundred dollars ($2,500) plus an amount up to but not exceeding twenty-seven cents ($0.27) for each family unit enrolled in its plan in this state as of the preceding June 30th, and shall be fixed by the commissioner by notice to all licensed plans and nonprofit hospital service plans on or before October 15th of each year. However, the amount paid by each nonprofit hospital service plan shall be two thousand dollars ($2,000) plus an amount up to, but not exceeding, one cent ($0.01) for each family unit and shall be for the purpose of reimbursing its share of all costs and expenses, including overhead, reasonably incurred in administering the changes made by the statute of the 1990 portion of the 1989–90 Regular Session that amended this section and included nonprofit hospital service plans within the scope of some parts of this chapter. In determining the amount assessed, the commissioner shall consider all appropriations from the General Fund for the support of this chapter and all reimbursements provided for in this chapter. For the purpose of this section, a family unit is a household composed of one or more individuals. The increase in the assessment authority made by statute of the 1990 portion of the 1989–90 Regular Session that amended this section is to fund the administration of the provisions enacted by that statute. The department shall use the increased assessment authority provided under this section only to the extent that it reasonably anticipates costs associated with administering Sections 1394.7 and 1394.8.

(c) The expense of requiring nonprofit hospital service plans described in paragraph (3) of subdivision (d) of Section 1343 to comply with the financial requirements of this chapter shall be charged against each nonprofit hospital service plan. The amount charged shall be the actual cost associated with regulating a nonprofit hospital service plan described in paragraph (3) of subdivision (d) of Section 1343, including the actual salaries or compensation paid to the persons conducting the administration and enforcement, the expenses incurred in the course thereof, and

overhead costs in connection therewith as fixed by the commissioner. In determining the cost of the administration or enforcement, the commissioner may use the estimated average hourly cost for all persons of similar classification performing administration or enforcement for the fiscal year. The amounts charged shall be billed not more frequently than monthly and shall be remitted by the nonprofit hospital service plan to the commissioner within 30 days.

(d) This section shall remain in effect only until April 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before April 1, 1993, deletes or extends that date.

SEC. 6. Section 1356 is added to the Health and Safety Code, to read:

1356. (a) Each plan applying for licensure under this chapter shall pay to the commissioner a nonrefundable application fee in the amount of four thousand dollars ($4,000) or, if the applicant is to offer only one type of specialized plan contract, two thousand five hundred dollars ($2,500) at the time of submission of the application.

(b) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan shall pay to the commissioner on or before the 15th day of December of each year, as a reimbursement of its share of all costs and expenses, including overhead, reasonably incurred in the administration of this chapter and not otherwise recovered by the commissioner under this chapter or from the General Fund, an amount as estimated by the commissioner for the ensuing year. The amount paid by each plan shall be two thousand five hundred dollars ($2,500) plus an amount up to but not exceeding twenty-seven cents ($0.27) for each family unit enrolled in its plan in this state as of the preceding June 30th, and shall be fixed by the commissioner by notice to all licensed plans on or before October 15th of each year. In determining the amount assessed, the commissioner shall consider all appropriations from the General Fund for the support of this chapter and all reimbursements provided for in this chapter. For the purpose of this section, a family unit is a household composed of one or more individuals. The increase in the assessment authority made by statute of the 1990 portion of the 1989–90 Regular Session that added this section is to fund the administration of the provisions enacted by that statute. The department shall use the increased assessment authority provided under this section only to the extent that it reasonably anticipates costs associated with administering Sections 1394.7 and 1394.8.

(c) This section shall become operative April 1, 1993.

SEC. 7. Section 1377 of the Health and Safety Code is amended to read:

1377. (a) Every plan which reimburses providers of health care service that do not contract in writing with the plan to provide health care services, or which reimburses its subscribers or enrollees for costs incurred in having received health care service from providers that do not contract in writing with the plan, in an amount which

exceeds 10 percent of its total costs for health care services for the immediately preceding six months, shall comply with the requirements set forth in either paragraph (1) or (2):

(1) (A) Place with the commissioner, or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, a noncontracting provider insolvency deposit consisting of cash or securities that are acceptable to the commissioner that at all times have a fair market value in an amount at least equal to 120 percent of the sum of the following:

(i) All claims for noncontracting provider services received for reimbursement, but not yet processed.

(ii) All claims for noncontracting provider services denied for reimbursement during the previous 45 days.

(iii) All claims for noncontracting provider services approved for reimbursement, but not yet paid.

(iv) An estimate of claims for noncontracting provider services incurred, but not reported.

(B) Each plan licensed pursuant to this chapter prior to January 1, 1991, shall, upon that date, make a deposit of 50 percent of the amount required by subparagraph (A), and shall maintain additional cash or cash equivalents as defined by rule of the commissioner, in the amount of 50 percent of the amount required by subparagraph (A), and shall make a deposit of 100 percent of the amount required by subparagraph (A) by January 1, 1992.

(C) The amount of the deposit shall be reasonably estimated as of the first day of the month and maintained for the remainder of the month.

(D) The deposit required by this paragraph is in addition to the deposit that may be required by rule of the commissioner and is an allowable asset of the plan in the determination of tangible net equity as defined in subdivision (b) of Section 1300.76. All income from the deposit shall be an asset of the plan and may be withdrawn by the plan at any time.

(E) A health care service plan that has made a deposit may withdraw that deposit or any part of the deposit if (i) a substitute deposit of cash or securities of equal amount and value is made, (ii) the fair market value exceeds the amount of the required deposit, or (iii) the required deposit under this paragraph is reduced or eliminated. Deposits, substitutions, or withdrawals may be made only with the prior written approval of the commissioner, but approval shall not be required for the withdrawal of earned income.

(F) The deposit required under this section is in trust and may be used only as provided by this section. The commissioner shall use the deposit of an insolvent health care service plan, as defined in Sections 1394.7 and 1394.8, for payment of claims of providers of health care services that do not contract in writing with the plan to provide health care services and payment of claims of enrollees of this state for costs incurred in having received health care services from providers that do not contract in writing with the plan. All claims for

reimbursement under this section shall be paid on a pro rata basis based on assets available to pay the ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the health care service plan. The commissioner may also use the deposit of an insolvent health care service plan for payment of any administrative costs associated with the administration of this section.

(G) The commissioner may, by regulation, prescribe the time, manner, and form for filing claims.

(H) The commissoner may permit a plan to meet a portion of this requirement by a deposit of tangible assets acceptable to the commissioner, the fair market value of which shall be determined on at least an annual basis by the commissioner. The plan shall bear the cost of any appraisal or valuations required hereunder by the commissioner.

(2) Maintain adequate insurance, or a guaranty arrangement approved in writing by the commissioner, to pay for any loss to providers, subscribers, or enrollees claiming reimbursement due to the insolvency of the plan.

(b) Whenever the reimbursements described in this section exceed 10 percent of the plan's total costs for health care services over the immediately preceding six months, the plan shall file a written report with the commissioner containing the information necessary to determine compliance with subdivision (a) no later than 30 business days from the first day of the month. Upon an adequate showing by the plan that the requirements of this section should be waived or reduced, the commissioner may waive or reduce these requirements to an amount as the commissioner deems sufficient to protect subscribers and enrollees of the plan consistent with the intent and purpose of this chapter.

(c) Every plan which reimburses providers of health care service on a fee-for-services basis; or which directly reimburses its subscribers or enrollees, to an extent exceeding 10 percent of its total payments for health care services, shall estimate and record in the books of account a liability for incurred and unreported claims. Upon a determination by the commissioner that the estimate is inadequate, the commissioner may require the plan to increase its estimate of incurred and unreported claims. Every plan shall promptly report to the commissioner whenever these reimbursables exceed 10 percent of its total expenditures for health care services.

As used herein the term "fee-for-services" refers to the situation where the amount of reimbursement paid by the plan to providers of service is determined by the amount and type of service rendered by the provider of service.

(d) In the event an insolvent plan covered by this section fails to pay a noncontracting provider sums for covered services owed, the provider shall first look to the uncovered expenditures insolvency deposit or the insurance or guaranty arrangement maintained by the

plan for payment. When a plan becomes insolvent, in no event shall a noncontracting provider, or agent, trustee, or assignee thereof, attempt to collect from the subscriber or enrollee sums owed for covered services by the plan or maintain any action at law against a subscriber or enrollee to collect sums owed by the plan for covered services without having first attempted to obtain reimbursement from the plan.

SEC. 8. Section 1394.7 is added to the Health and Safety Code, to read:

1394.7. (a) As used in this section the following definitions shall apply:

(1) "Health care service plan" means any plan as defined in Section 1345, but this section does not apply to specialized health care service contracts.

(2) "Carrier" means a health care service plan, an insurer issuing group disability coverage which covers hospital, medical, or surgical expenses, a nonprofit hospital service plan, or any other entity responsible for either the payment of benefits or the provision of hospital, medical, and surgical benefits under a group contract.

(3) "Insolvency" means that the commissioner has determined that the health care service plan is not financially able to provide health care services to its enrollees and (A) the commissioner has taken an action pursuant to Section 1386, 1391, or 1399, or (B) an order requested by the commissioner or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1.

(b) In the event of the insolvency of a health care service plan and upon order of the commissioner, any health care service plan which the commissioner determines to have sufficient health care delivery resources and sufficient financial and administrative capacity and that participated in the enrollment process with the insolvent health care service plan at the last regular open enrollment period of a group shall offer enrollees of the group in the insolvent health care service plan a 30-day enrollment period commencing upon the date specified by the commissioner. Each health care service plan shall offer enrollees of the group in the insolvent health care service plan the same coverages and rates that it offered to enrollees of the group at the last regular open enrollment period of the group. Coverage shall be effective upon receipt by the successor plan of an application for enrollment by or on behalf of a subscriber or enrollee of the insolvent plan. The commissioner shall send a notice of the insolvency of a health care service plan to the Insurance Commissioner.

(c) If no other carrier had been offered to groups enrolled in the insolvent health care service plan, or if the commissioner determines that the other carriers do not include a sufficient number of health care service plans that have adequate health care delivery resources or the financial or administrative capacity to assure that health care services will be available and accessible to all of the group enrollees of the insolvent health care service plan, then the commissioner shall

allocate equitably the insolvent health care service plan's group contracts for the groups among all health care service plans which operate within at least a portion of the service area of the insolvent health care service plan , taking into consideration the health care delivery resources and the financial and administrative capacity of each health care service plan. The commissioner shall also have the authority to allocate equitably enrollees if he or she has been unable to successfully place them through the open enrollment procedure in subdivision (b). The commissioner shall make every reasonable effort to allocate enrollees within 30 days of the insolvency of the plan, but not later than 45 days after insolvency. Each health care service plan to which a group or groups are so allocated shall offer the group or groups the health care service plan's coverage which is most similar to each group's coverage with the insolvent health care service plan, as determined by the commissioner, at rates determined in accordance with the successor health care service plan's existing rating methodology. Coverage shall be effective upon the date specified by the commissioner. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent health care service plan's contract or policy, no provision in a successor health care service plan's contract of coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding health care service plan shall be applied with respect to those enrollees validly covered under the insolvent health care service plan's contract or policy on the date of the assignment.

(d) The commissioner shall also allocate equitably the insolvent health care service plan's nongroup enrollees among all health care service plans which operate within at least a portion of the service area of the insolvent health care service plan, taking into consideration the health care delivery resources or the financial and administrative capacity of each health care service plan. Each health care service plan to which nongroup enrollees are allocated shall offer the nongroup enrollees the health care service plan's most similar coverage for individual or conversion coverage, as determined by the commissioner, taking into consideration his or her type of coverage in the insolvent health care service plan, at rates determined in accordance with the successor health care service plan's existing rating methodology. Coverage shall be effective upon the date specified by the commissioner. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent health care service plan's contract or policy, no provision in a successor health care service plan's contract of coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding health care service plan shall be applied with respect to those enrollees validly covered under the insolvent health care service plan's

contract or policy on the date of the assignment. Successor health care service plans which do not offer direct nongroup enrollment may aggregate all allocated nongroup enrollees into one group for rating and coverage purposes.

(e) Contracting providers shall continue to provide services to enrollees of an insolvent plan until the effective date of an enrollee's coverage in a successor plan selected pursuant to either open enrollment or the allocation process but in no event for the period exceeding that required by their contract or 45 days in the case of allocation, whichever is greater; or for a period exceeding that required by their contract or 30 days in the case of open enrollment, whichever is greater.

(f) The failure to comply with an order under this section shall constitute a violation of this section.

SEC. 9. Section 1394.8 is added to the Health and Safety Code, to read:

1394.8. (a) As used in this section:

(1) "Carrier" means a specialized health care service plan, and any of the following entities which offer coverage comparable to the coverages offered by a specialized health care service plan: an insurer issuing group disability coverage; a nonprofit hospital service plan; or any other entity responsible for either the payment of benefits for or the provisions of services under a group contract.

(2) "Insolvency" means that the commissioner has determined that the specialized health care service plan is not financially able to provide specialized health care services to its enrollees and (A) the commissioner has taken an action pursuant to Section 1386, 1391, 1399, or (B) an order requested by the commissioner or the Attorney General has been issued by the superior court under Sections 1392, 1393, or 1394.1.

(3) "Specialized health care service plan" means any plan authorized to issue only specialized health care service plan contracts as defined in Section 1345.

(b) In the event of the insolvency of a specialized health care service plan and upon order of the commissioner, any specialized health care service plan which the commissioner determines to have sufficient health care delivery resources and sufficient financial and administrative capacity and that participated in the enrollment process with the insolvent specialized health care service plan at the last regular open enrollment period of a group for the same type of specialized health care services shall offer enrollees of the group in the insolvent specialized health care service plan a 30-day enrollment period commencing upon the date specified by the commissioner. Each specialized health care service plan shall offer enrollees of the group in the insolvent specialized health care service plan the same specialized coverage and rates that it offered to the enrollees of the group at its last regular open enrollment period. Coverage shall be effective upon receipt by the successor plan of an application for enrollment by or on behalf of a subscriber or enrollee

of the insolvent plan. The commissioner shall send a notice of the insolvency of a specialized health care service plan to the Insurance Commissioner.

(c) If no other carrier for the same type of specialized health care services had been offered to some groups enrolled in the insolvent specialized health care service plan, or if the commissioner determines that the other carriers do not include a sufficient number of specified health care service plans which have adequate health care delivery resources or the financial and administrative capacity to assure that the specialized health care services will be available and accessible to all of the group enrollees of the insolvent specialized health care service plan, then the commissioner shall allocate equitably the insolvent specialized health care service plan's group contracts for the groups among all specialized health care service plans which offer the same type of specialized health care services as the insolvent plan and which operate within at least a portion of the service area of the insolvent specialized health care service plan, taking into consideration the health care delivery resources and the financial and administrative capacity of each specialized health care service plan. The commissioner shall also have the authority to allocate equitable enrollees if he or she has been unable to successfully place them through the open enrollment procedure in subdivision (b). The commissioner shall make every reasonable effort to allocate enrollees within 30 days of the insolvency of the plan, but not later than 45 days after insolvency. Each specialized health care service plan to which a group or groups is so allocated shall offer such group or groups the specialized health care service plan's coverage which is most similar to each group's coverage with the insolvent specialized health care service plan as determined by the commissioner, at rates determined in accordance with the successor specialized health care service plan's existing rating methodology. Coverage shall be effective on a date specified by the commissioner. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent specialized health care service plan's contract or policy, no provision in a successor specialized health care service plan's contract of coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding plan shall be applied with respect to those enrollees validly covered under the insolvent specialized health care service plan's contract or policy on the date of the assignment.

(d) The commissioner shall also allocate equitably the insolvent specialized health care service plan's nongroup enrollees among all specialized health care services which offer the same type of specialized health care services as the insolvent plan and which operate within at least a portion of the insolvent specialized health care service plan's service area, taking into consideration the health care delivery resources and the financial and administrative capacity

of each specialized health care service plan. Each specialized health care service plan to which nongroup enrollees are allocated shall offer the nongroup enrollees the health care service plan's most similar coverage for individual or conversion coverage, as determined by the commissioner, taking into consideration his or her type of coverage in the insolvent specialized health care service plan at rates determined in accordance with the successor specialized health care service plan's existing rating methodology. Coverage shall be effective on the date specified by the commissioner. Further, except to the extent benefits for any condition would have been reduced or excluded under the insolvent specialized health care service plan's contract or policy, no provision in a successor specialized health care service plan's contract of coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted on the effective date of the enrollee's assignment to the succeeding plan shall be applied with respect to those enrollees validly covered under the insolvent specialized health care service plan's contract or policy on the date of the assignment. Successor specialized health care service plans which do not offer direct nongroup enrollment may aggregate all allocated nongroup enrollees into one group for rating and coverage purposes.

(e) Contracting providers shall continue to provide services to enrollees of an insolvent plan until the effective date of an enrollee's coverage in a successor plan selected pursuant to either open enrollment or the allocation process but in no event for the period exceeding that required by their contract or 45 days in the case of allocation, whichever is greater; or for a period exceeding that required by their contract or 30 days in the case of open enrollment, whichever is greater.

(f) Failure to comply with an order pursuant to this section shall constitute a violation of this section.

SEC. 10. Section 1396.5 is added to the Health and Safety Code, to read:

1396.5. A nonprofit hospital corporation which substantially indemnified subscribers and enrollees and was operating in 1965 under Chapter 11A (commencing with Section 11490) of Part 2 of Division 2 of the Insurance Code and which is regulated under the Knox-Keene Health Care Service Plan Act shall enjoy the privileges under the act which would have been available to it had it been registered under the Knox-Mills Health Plan Act and applied for a license under the Knox-Keene Health Care Service Plan Act in 1976.

SEC. 11. Article 14.8 (commencing with Section 1068) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 14.8. Group Enrollment from Health Care Service Plans

1068. (a) As used in this section, the following definitions shall apply:

(1) "Health care service plan" means any plan as defined in Section 1345 of the Health and Safety Code, but this section does not apply to specialized health care service contracts.

(2) "Carrier" means a health care service plan, an insurer issuing group disability coverage which covers hospital, medical, or surgical expenses, a nonprofit hospital service plan, or any other entity responsible for either the payment of benefits for or the provision of hospital, medical, and surgical benefits under a group contract.

(3) "Insolvency" means that the Commissioner of Corporations has determined that the health care service plan is not financially able to provide health care services to its enrollees and (A) the Commissioner of Corporations has taken an action pursuant to Section 1386, 1391, or 1399 of the Health and Safety Code, or (B) an order requested by the Commissioner of Corporations or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1 of the Health and Safety Code.

(b) In the event of the insolvency of a health care service plan, upon order of the commissioner which shall be issued following his or her receipt of a notice issued by the Commissioner of Corporations pursuant to Section 1394.7 of the Health and Safety Code, any insurer, nonprofit hospital service plan, and any other entity, other than a health care service plan, responsible for either the payment of benefits for or the provision of hospital, medical, and surgical benefits under a group contract, that participated in the enrollment process with the insolvent health care service plan at the last regular open enrollment period of a group, shall offer enrollees of the group in the insolvent health care service plan a 30-day enrollment period commencing upon the date of insolvency. Each such carrier shall offer enrollees of the group in the insolvent health care service plan the same coverages and rates that it offered to enrollees of the group at the last regular open enrollment period of the group.

1068.1. (a) As used in this section:

(1) "Carrier" means a specialized health care service plan, and any of the following entities which offer coverage comparable to the coverages offered by a specialized health care service plan: an insurer issuing group disability coverage; a nonprofit hospital service plan; or other entity responsible for either the payment of benefits for or the provision of services under a group contract.

(2) "Insolvency" means that the Commissioner of Corporations has determined that the specialized health care service plan is not financially able to provide specialized health care services to its enrollees and (A) the Commissioner of Corporations has taken an action pursuant to Section 1386, 1391, or 1399 of the Health and Safety Code, or (B) an order requested by the commissioner or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1 of the Health and Safety Code.

(3) "Specialized health care service plan" means any plan authorized to issue only specialized health care service plan contracts as defined in Section 1345 of the Health and Safety Code.

(b) In the event of the insolvency of a specialized health care service plan, upon order of the commissioner which shall be issued following his or her receipt of a notice issued by the Commissioner of Corporations pursuant to Section 1394.8 of the Health and Safety Code, all carriers that participated in the enrollment process with the insolvent specialized health care service plan at a group's last regular open enrollment period for the same type of specialized health care service benefits shall offer the group's enrollees in the insolvent specialized health care service plan a 30-day enrollment period commencing upon the date of insolvency. Each such carrier shall offer enrollees of the insolvent specialized health care service plan the same specialized coverage and rates that it had offered to the enrollees of the group at its last regular open enrollment period.

1068.2. (a) The commissioner shall have the administrative authority to assess penalties against any person, including a natural person or other entity, for violations of this article.

(b) Upon a showing of a violation of this article in any civil action, a court may also assess the penalties prescribed in this section.

(c) Whenever the commissioner has reasonable cause to believe or determines after a public hearing that any person has violated this article he or she shall make and serve upon the person an notice of hearing. The notice shall state the commissioner's intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition or grounds upon which the commissioner is holding the hearing and assessing the penalties. The hearings shall occur within 30 days after the notice is served. Within 30 days after the hearing the commissioner shall issue an order specifying the penalty. The penalties resulting from the hearing shall be paid to the Insurance Fund, but may be spent only when appropriated by the Legislature.

(d) Any person who violates this article is liable for administrative penalties of no less than twenty-five thousand dollars ($25,000).

CHAPTER 1044

An act to add Section 14131.2 to the Government Code, and to amend Sections 10226, 10351, 10352, 10359, 10364, 10365, 10367, 10369, 10370, and 10371 of, and to repeal Sections 10338, 10347, and 10368 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 14131.2 is added to the Government Code, to read:

14131.2. Solely for the purpose of validating the selection of consultants completed prior to July 1, 1990, the Legislature hereby declares that the process of evaluating and selecting consultants for that list of projects specifically identified in the selection process undertaken during the period between June 13, 1989, and June 30, 1990, in support of the Riverside County Transportation Improvement Plan, as specified in Measure A on the November 8, 1988, ballot for Riverside County, is consistent with the requirements of this article, and the resultant numerically ranked list of consultants shall serve as the basis of negotiation and award of contracts by the department for two years from the operative date of this section. The process of selection referred to in this section is not valid under this article for the selection of consultants if that process was not completed prior to July 1, 1990.

SEC. 1.5. Section 10226 of the Public Contract Code is amended to read:

10226. Every contract shall contain a provision in regard to the time when the whole or any specified portion of the work contemplated shall be completed, and shall provide that for each day completion is delayed beyond the specified time, the contractor shall forfeit and pay to the state a specified sum of money, to be deducted from any payments due or to become due to the contractor. The sum so specified is valid as liquidated damages unless manifestly unreasonable under the circumstances existing at the time the contract was made. A contract for a road project, flood control project, or project involving facilities of the State Water Resources Development System may also provide for the payment of extra compensation to the contractor, as a bonus for completion prior to the specified time, the provision, if used, to be included in the specifications and to clearly set forth the basis for the payment.

SEC. 1.5. Section 10338 of the Public Contract Code is repealed.

SEC. 2. Section 10347 of the Public Contract Code is repealed.

SEC. 3. Section 10351 of the Public Contract Code is amended to read:

10351. (a) The department shall exempt from its approval contracts under fifty thousand dollars ($50,000) which any state agency awards if the agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives such a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

SEC. 4. Section 10352 of the Public Contract Code is amended to read:

10352. (a) The department shall conduct a quality control review of the audit of the contracting program required by Section 10351.

(b) The exemption provided by Section 10351 may be withdrawn by the department at any time that the department finds that the state agency to which the exemption has been granted is out of compliance with the requirements of Section 10351. In any case where the exemption is withdrawn, the department shall state in writing, the reasons for the withdrawal and shall specify the actions the state agency is required to take before the exemption again may be requested.

SEC. 5. Section 10359 of the Public Contract Code is amended to read:

10359. (a) Each state agency or department shall annually prepare a report pursuant to this section which includes a list of the consultant contracts into which it has entered during the previous fiscal year. The listing shall include the following information:

(1) The name and identification of each contractor.

(2) The type of bidding entered into, the number of bidders, whether the low bidder was accepted, and if the low bidder was not accepted, an explanation of why another contractor was selected.

(3) The amount of the contract price.

(4) Whether the contract was a sole-source contract, and why the contract was a sole-source contract.

(5) The purpose of the contract and the potential beneficiaries.

(6) The date on which the initial contract was signed, the date on which the work began and was completed.

The report shall also include a separate listing of consultant contracts completed during that fiscal year, with the same information as above.

(b) The report this section requires shall also include a list of any contracts underway during that fiscal year on which any change was made regarding the following:

(1) The completion date of the contract.

(2) The amount of money to be received by the contractor, if it

exceeds 3 percent of the original contract price.

(3) The purpose of the contract or duties of the contractor. A brief explanation shall be given if the change in purpose is significant.

(c) Copies of the annual report shall be sent within 30 working days after the end of the previous fiscal year to the Legislative Analyst, the Department of Finance, the Department of General Services, the Auditor General, the Joint Legislative Budget Committee, the Senate Appropriations Committee, and the Assembly Ways and Means Committee.

(d) State agencies or departments shall not use the temporary budget allocation process as a means of circumventing the requirements of this section.

(e) Sixty days after the close of the fiscal year, the Department of General Services shall furnish to the officials and committees listed in subdivision (c), a list of the departments and agencies which have not submitted the required report specified in this section.

SEC. 6. Section 10364 of the Public Contract Code is amended to read:

10364. (a) The department shall exempt from its approval consulting services contracts under fifty thousand dollars ($50,000) which any state agency awards if the agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives such a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

SEC. 7. Section 10365 of the Public Contract Code is amended to read:

10365. (a) The department shall conduct a quality control review of the audit of the contracting program required by Section

10364.

(b) The exemption provided by Section 10364 may be withdrawn by the department at any time that the department finds that the state agency to which the exemption has been granted is out of compliance with the requirements of Section 10364. In any case where the exemption is withdrawn, the department shall state in writing the reasons for the withdrawal and shall specify the actions the state agency is required to take before the exemption again may be requested.

SEC. 8. Section 10367 of the Public Contract Code is amended to read:

10367. (a) Each contractor shall be advised in writing on the standard contract form that his or her performance, or the firm's performance under the contract will be evaluated.

(b) The department shall use standardized evaluation forms and submit the forms to every state agency or department. Each state agency or department shall use post-evaluation forms to evaluate all consulting services contracts totaling five thousand dollars ($5,000) or more.

The department shall devise standards and criteria for the post-evaluation forms. These standardized post-evaluation forms shall consist of a form for assessing the need and value of the consulting services contract to the state, and a form for assessing the usability and utility of the completed consulting services contract.

SEC. 9. Section 10368 of the Public Contract Code is repealed.

SEC. 10. Section 10369 of the Public Contract Code is amended to read:

10369. (a) Each state agency shall conduct a post-evaluation, by completing the post-evaluation form, of each consulting services contract totaling five thousand dollars ($5,000) or more that it executes.

(b) The agency shall evaluate the performance of the contractor in doing the work or delivering the services for which the contract was awarded. The agency shall report on all of the following:

(1) Whether the contracted work or services were completed as specified in the contract, and reasons for and amount of any cost overruns or delayed completions.

(2) Whether the contracted work or services met the quality standards specified in the contract.

(3) Whether the contractor fulfilled all the requirements of the contract and if not, in what ways the contractor did not fulfill the contract.

(4) Factors outside the control of the contractor that caused difficulties in contractor performance.

(5) Other information the department may require.

(6) How the contract results and findings will be utilized to meet the agency goals.

(c) If the contractor's performance was judged unsatisfactory on any of the factors specified in subdivision (b) and was not mitigated

by circumstances specified in paragraph (4) of subdivision (b), the evaluation shall be considered unsatisfactory for the purposes of subdivisions (e) and (f).

(d) The post-evaluation shall be prepared within 60 days of the completion of the contract.

(e) Post-evaluations shall remain on file by the agency for a period of 36 months. If the contractor did not satisfactorily perform the work or service specified in the contract, the agency conducting the evaluation shall place one copy of the evaluation form in the agency's contract file and send one copy of the form to the department within five working days of the completion of the evaluation.

(f) Upon filing an unsatisfactory evaluation with the department, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have 30 days to prepare and send statements to the agency and the department defending his or her performance under the contract. The contractor's statement shall be filed with the evaluation in the agency's contract file and in the department.

SEC. 11. Section 10370 of the Public Contract Code is amended to read:

10370. The evaluations and contractor responses on file with the state agencies and the department shall not be public records. The department shall act as a central depository for all state agencies making evaluation or desiring information on a contractor's record with the state and shall send a copy of any post-evaluation report and response to the contracting manager or contracting officer of any state agency upon receiving a written, telephonic or other form of request stating the reason for the request. The post-evaluations and contractor responses shall remain on file for a period of 36 months only.

Failure to send a negative post-evaluation to the department shall be grounds for rejection of future contracts or modification of exemptions.

SEC. 12. Section 10371 of the Public Contract Code is amended to read:

10371. The following provisions shall apply to all consulting services contracts:

(a) Each state agency shall, regardless of the fiscal amount involved, use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.

(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars ($12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars ($12,500) approved by the department.

(c) Each state agency shall, prior to signing a consulting services

contract totaling one thousand dollars ($1,000), or more prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.

(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For the purpose of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

(e) No consulting services contractor shall be awarded a contract totaling five thousand dollars ($5,000), or more, unless all of the following apply:

(1) The state agency has reviewed any contractor evaluation form on file with the Department of General Services in accordance with Section 10369.

(2) Each agency shall require that a completed resumé for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, be attached to the contract for public record and is made a part of the contract.

(3) The Department of General Services shall notify an agency seeking approval of a proposed contract within 10 working days if the Department of General Services has a negative evaluation in its files on a previous contract or contracts done by this contractor.

(f) The department may require special evaluation procedures for multiyear contracts or for contracts calling for special evaluation procedures beyond the post-evaluation.

(g) Any contract for consulting services awarded without competition shall be listed in the California State Contracts Register. The information contained in the listing shall include the contract recipient, amount, and services covered. The requirement of this subdivision shall not apply to any contract awarded without competition executed with an expert witness for purposes of civil litigation in a pending case.

(h) The department shall have the duty to restrict or terminate the authority of a state agency to enter into consultant contracts if the agency has consistently avoided the proper preparation, retention, or submission of post-evaluation forms, as required by this article.

SEC. 13. The Auditor General, during the annual fiscal audits of major departments, shall include an audit of how each agency is complying with state law and regulations dealing with consultant contracts. The audit shall include, but not be limited to, the matters in subdivisions (a), (b), and (c), and shall be provided to those

agencies listed in subdivision (c) of Section 10359 of the Public Contract Code. In addition to major departments, the Auditor General shall also audit consultant contract usage by a random sampling of three smaller departments and offices each year.

Matters to be considered:

(a) The extent to which each agency has complied with state law.

(b) The use or overuse of sole-source contracts.

(c) Whether the state agency has utilized the results obtained by the consultants pursuant to the contracts.

It is the intent of the Legislature that the information contained in the report be available for use in legislative budget hearings.

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 allow public contracts for needed services to be executed during the 1990–91 fiscal year and to provide for review of public contracts in accordance with the provisions of this act, it is necessary that this act take effect immediately.

CHAPTER 1045

An act to amend Sections 201, 420, 425, and 709 of, and to repeal Sections 202, 203, and 423 of, the Honey Lake Valley Groundwater Management District Act (Chapter 1392 of the Statutes of 1989), relating to the Honey Lake Valley Groundwater Management District.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 201 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is amended to read:

Sec. 201. For the purposes of this act, the boundaries of the district are as follows:

Of Township 24 north, Range 17 east - Sections: 1, 2, 3, E ½ 4, 10, 11, 12, and 13.

Of Township 24 north, Range 18 east - Sections: 6, 7, 18, and 19.

Of Township 25 north, Range 16 east - Sections: 1, 2, NE ¼ 3, 11, and 12.

Of Township 25 north, Range 17 east - Sections: 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 33, 34, 35, and 36.

Of Township 26 north, Range 15 east - Sections: 1, 2, 3, 4, NE ¼ 10, 11, 12, and 13.

Of Township 26 north, Range 16 east - Sections: 1 to 18, inclusive; 20 to 27, inclusive; NE ¼ 28, 34, 35, and 36.

Of Township 26 north, Range 17 east - Sections: 1 to 26, inclusive; W ½ 29; 30; 31; W ½ 32; and 36.

Of Township 27 north, Range 14 east - Sections: 1 to 6, inclusive; 8 to 17, inclusive; NE ¼ 21; 22 to 26, inclusive; and 36.

Of Township 27 north, Range 15 east - Sections: 1 to 36, inclusive.

Of Township 27 north, Range 16 east - Sections: 1 to 36, inclusive.

Of Township 27 north, Range 17 east - Sections: 1 through 36, inclusive.

Of Township 28 north, Range 12 east - Sections: 1, 2, and 12.

Of Township 28 north, Range 13 east - Sections: 1 to 16, inclusive; 23; 24; 25; NE ¼ 26; and 36.

Of Township 28 north, Range 14 east - Sections: 1 to 36, inclusive.

Of Township 28 north, Range 15 east - Sections: 1 to 36, inclusive.

Of Township 28 north, Range 16 east - Sections: W ½ 4 and 5 to 36, inclusive.

Of Township 28 north, Range 17 east - Sections: 7 to 36, inclusive.

Of Township 29 north, Range 11 east - Section: 24.

Of Township 29 north, Range 12 east - Sections: 1 to 5, inclusive; E ½ 6; 8 to 25, inclusive; and 36.

Of Township 29 north, Range 13 east - Sections: 1 to 24, inclusive, and 26 to 35, inclusive.

Of Township 29 north, Range 14 east - Sections: 4 to 36, inclusive.

Of Township 29 north, Range 15 east - Sections: 2 to 36, inclusive.

Of Township 29 north, Range 16 east - Sections: 17, 18, 19, 20, 28, 29, 30, 31, 32, and 33.

Of Township 30 north, Range 11 east - Section: 36.

Of Township 30 north, Range 12 east - Sections: 14, 15, 22, 23, and 25 to 36, inclusive.

Of Township 30 north, Range 13 east - Sections: 24, 25, 26, 31, 32, 33, 34, 35, and 36.

Of Township 30 north, Range 14 east - Sections: 18, 19, 20, 28, 29, 30, 31, 32, and 33.

SEC. 2. Section 202 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is repealed.

SEC. 3. Section 203 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is repealed.

SEC. 4. Section 420 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is amended to read:

Sec. 420. (a) Any ordinance adopted pursuant to this act shall become effective 30 days after 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. 5. Section 423 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is repealed.

SEC. 6. Section 425 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is amended to read:

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 County of Lassen, the State of Nevada, and the County of Washoe. Any joint powers agreements with the State of Nevada and the County of Washoe shall include the County of Lassen.

SEC. 7. Section 709 of the Honey Lake Valley Groundwater Basin Act (Chapter 1392 of the Statutes of 1989) is amended to read:

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 limitation or suspension of extraction 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) Prior industrial use and the need for water supply for continued operation.

(g) Any other factors that the district reasonably feels it should consider in order to reach an equitable distribution within the entire district.

CHAPTER 1046

An act to amend Section 798.17 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 798.17 of the Civil Code is amended to read:

798.17. (a) Rental agreements meeting the criteria of subdivision (b) shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent. The terms of such a rental agreement shall prevail over conflicting provisions of such an ordinance, rule, regulation, or initiative measure limiting or restricting rents in mobilehome parks only during the term of the rental agreement or one or more uninterrupted, continuous extensions thereof. If the rental agreement is not extended and no new rental agreement in excess of 12 months' duration is entered into, then the last rental rate charged for the space under the previous rental agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulation, if any.

In the first sentence of the first paragraph on the first page of a rental agreement entered into pursuant to this section, there shall be set forth a provision in at least 12-point boldface type if the agreement is printed, or in capital letters if the agreement is typed, giving notice that the agreement will be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent.

(b) Rental agreements subject to subdivision (a) shall, except as provided in subdivision (e), meet all of the following criteria:

(1) The rental agreement shall be in excess of 12 months' duration.

(2) The rental agreement shall be entered into between the management and a homeowner for the personal and actual residence of the homeowner.

(3) The homeowner shall have at least 30 days from the date the rental ageement is first offered to the homeowner to accept or reject the agreement.

(4) A homeowner who executes a rental agreement pursuant to this section may rescind the agreement by notifying the management in writing within 72 hours of the homeowner's execution of the rental agreement.

(c) If pursuant to subdivision (b) the homeowner rejects the offered rental agreement or rescinds a signed rental agreement, the

homeowner shall be entitled to instead accept, pursuant to Section 798.18, a rental agreement for a term of 12 months or less from the date the offered agreement was to begin. In the event the homeowner elects to have a rental ageement for a term of 12 months or less, including a month-to-month tenancy, the rental agreement shall provide the same rental charges, terms, and conditions as a rental agreement offered pursuant to subdivision (b), during the first 12 months, except for options, if any, contained in the offered rental agreement to extend or renew the agreement.

(d) Nothing in subdivision (c) or (e) shall be construed to prohibit the management from offering gifts of value, other than rental rate reductions, to homeowners or prospective homeowners who execute a rental agreement subject to subdivision (a).

(e) If a new rental agreement subject to subdivision (a) is offered to a prospective homeowner, including a purchaser of a mobilehome already located in a park, the prospective homeowner shall have at least 10 working days from the date the rental agreement is first offered to accept or reject the agreement. The prospective homeowner shall have the right to rescind the rental agreement after signing it by notifying the management in writing within 72 hours of the execution of the rental agreement. If the prospective homeowner rejects the offered rental agreement or rescinds a signed agreement, nothing in this section shall be deemed to entitle the prospective homeowner to instead accept a rental agreement pursuant to Section 798.18. The execution of an offered rental agreement and its subsequent rescission shall not be deemed to create any rights of tenancy on behalf of the prospective homeowner in the mobilehome park.

(f) Any rental agreement subject to subdivision (a) which is first entered into on or after January 1, 1991, shall be subject to the following conditions:

(1) No extension of the rental agreement beyond the initial stated term shall be renewable at the sole option of either the park management or the homeowner. The initial stated term of the rental agreement shall not exceed five years, unless (A) the rental agreement was voluntarily entered into by the homeowner and was not a mandatory requirement or prerequisite to tenancy or (B) Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code is applicable to the tenancy established by the rental agreement and there has been compliance with the applicable requirements of those provisions.

(2) A provision of a rental agreement requiring assignment of the rental agreement to a purchaser or transferee is void and unenforceable, except as follows:

(A) A rental agreement may contain such a provision if (i) the rental agreement was voluntarily entered into by the homeowner and was not a mandatory requirement or prerequisite to tenancy or (ii) Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code is applicable to the tenancy

established by the rental agreement and there has been compliance with the applicable requirements of those provisions.

(B) A rental agreement which requires the assumption thereof by a purchaser or transferee of a mobilehome in a park during the initial term of the rental agreement, not to exceed five years, shall be enforceable for that term, and the purchaser or transferee for that term shall not be entitled to terminate the rental agreement pursuant to Section 798.59.

This subdivision does not apply to rental agreements first entered into before January 1, 1991, regardless of whether the rental agreement has been assigned one or more times to purchasers or transferees of the homeowner who originally entered into that rental agreement and his or her successors in interest.

(g) This section does not apply to or supersede other provisions of this part or other state law.

SEC. 2. Section 798.17 of the Civil Code is amended to read:

798.17. (a) Rental agreements meeting the criteria of subdivision (b) shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent. The terms of such a rental agreement shall prevail over conflicting provisions of such an ordinance, rule, regulation, or initiative measure limiting or restricting rents in mobilehome parks only during the term of the rental agreement or one or more uninterrupted, continuous extensions thereof. If the rental agreement is not extended and no new rental agreement in excess of 12 months' duration is entered into, then the last rental rate charged for the space under the previous rental agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulation, if any.

In the first sentence of the first paragraph on the first page of a rental agreement entered into pursuant to this section, there shall be set forth a provision in at least 12-point boldface type if the agreement is printed, or in capital letters if the agreement is typed, giving notice that the agreement will be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent.

(b) Rental agreements subject to subdivision (a) shall, except as provided in subdivision (e), meet all of the following criteria:

(1) The rental agreement shall be in excess of 12 months' duration.

(2) The rental agreement shall be entered into between the management and a homeowner for the personal and actual residence of the homeowner.

(3) The homeowner shall have at least 30 days from the date the rental ageement is first offered to the homeowner to accept or reject the agreement.

(4) A homeowner who executes a rental agreement pursuant to

this section may rescind the agreement by notifying the management in writing within 72 hours of the homeowner's execution of the rental agreement.

(c) If pursuant to subdivison (b) the homeowner rejects the offered rental agreement or rescinds a signed rental agreement, the homeowner shall be entitled to instead accept, pursuant to Section 798.18, a rental agreement for a term of 12 months or less from the date the offered agreement was to begin. In the event the homeowner elects to have a rental ageement for a term of 12 months or less, including a month-to-month tenancy, the rental agreement shall provide the same rental charges, terms, and conditions as a rental agreement offered pursuant to subdivision (b), during the first 12 months, except for options, if any, contained in the offered rental agreement to extend or renew the agreement.

(d) Nothing in subdivision (c) or (e) shall be construed to prohibit the management from offering gifts of value, other than rental rate reductions, to homeowners or prospective homeowners who execute a rental agreement subject to subdivision (a).

(e) If a new rental agreement subject to subdivision (a) is offered to a prospective homeowner, including a purchaser of a mobilehome already located in a park, the prospective homeowner shall have at least 10 working days from the date the rental agreement is first offered to accept or reject the agreement. The prospective homeowner shall have the right to rescind the rental agreement after signing it by notifying the management in writing within 72 hours of the execution of the rental agreement. If the prospective homeowner rejects the offered rental agreement or rescinds a signed agreement, nothing in this section shall be deemed to entitle the prospective homeowner to instead accept a rental agreement pursuant to Section 798.18. The execution of an offered rental agreement and its subsequent rescission shall not be deemed to create any rights of tenancy on behalf of the prospective homeowner in the mobilehome park.

(f) Any rental agreement subject to subdivision (a) which is first entered into on or after January 1, 1991, shall be subject to the following conditions:

(1) No extension of the rental agreement beyond the initial stated term shall be renewable at the sole option of either the park management or the homeowner. The initial stated term of the rental agreement shall not exceed five years, unless (A) the rental agreement was voluntarily entered into by the homeowner and was not a mandatory requirement or prerequisite to tenancy or (B) Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code is applicable to the tenancy established by the rental agreement and there has been compliance with the applicable requirements of those provisions.

(2) A provision of a rental agreement requiring assignment of the rental agreement to a purchaser or transferee is void and unenforceable, except as follows:

(A) A rental agreement may contain such a provision if (i) the rental agreement was voluntarily entered into by the homeowner and was not a mandatory requirement or prerequisite to tenancy or (ii) Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code is applicable to the tenancy established by the rental agreement and there has been compliance with the applicable requirements of those provisions.

(B) A rental agreement which requires the assumption thereof by a purchaser or transferee of a mobilehome in a park during the initial term of the rental agreement, not to exceed five years, shall be enforceable for that term, and the purchaser or transferee for that term shall not be entitled to terminate the rental agreement pursuant to Section 798.59.

This subdivision does not apply to rental agreements first entered into before January 1, 1991, regardless of whether the rental agreement has been assigned one or more times to purchasers or transferees of the homeowner who originally entered into that rental agreement and his or her successors in interest.

(g) With respect to any space in a mobilehome park which is exempt under subdivision (a) from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the mobilehome park shall be exempt from any fee or other exaction imposed pursuant to such an ordinance, rule, regulation, or initiative measure or imposed for the purpose of defraying the cost of administration thereof.

(h) This section does not apply to or supersede other provisions of this part or other state law.

SEC. 3. Section 2 of this bill incorporates amendments to Section 798.17 of the Civil Code proposed by both this bill and SB 2010. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 798.17 of the Civil Code, and (3) this bill is enacted after SB 2010, in which case Section 1 of this bill shall not become operative.

CHAPTER 1047

An act to add Section 25812.9 to, and to add and repeal Section 25878.4 of, the Health and Safety Code, relating to radioactive waste.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 25812.9 is added to the Health and Safety Code, to read:

25812.9. (a) The license designee shall file periodic financial

reports with the department as directed by the department. These reports shall provide detailed information on past and projected expenditures for development and operation of the low-level radioactive waste disposal site according to progammatic function, including, but not limited to, all of the following:

(1) Program management.
(2) Candidate sites selection.
(3) Site characterization.
(4) Environmental.
(5) Public and agency involvement.
(6) Licensing and permitting.
(7) Site development.
(8) Land acquisition.
(9) Financing.
(10) Operations.

(b) The license designee shall file reports with the department, as directed by the department, which identify, quantify, and explain major causes of actual and projected cost overruns and cost underruns with regard to the cost projections provided in the statement of capabilities and notice of intent.

(c) The Legislature finds and declares that the purpose of this section is to identify minimum financial reporting requirements for the costs of developing and operating the state's low-level radioactive waste disposal facility. This section does not limit the authority of the department to require the license designee to furnish any additional information which the department determines to be necessary to fulfill its duties under this chapter, including Section 25812.7.

SEC. 2. Section 25878.4 is added to the Health and Safety Code, to read:

25878.4. (a) The sum of the surcharges set by the host state and imposed by the commission for purposes of subparagraph (c) of paragraph (3) of subdivision (G) of Article 3 of, and the charges for disposal specified in paragraph (3) of subdivision (E) of Article 4 of, the Southwestern Low-Level Radioactive Waste Disposal Compact, as set forth in Section 25878, shall be twenty-nine dollars ($29) per cubic foot of Class A low-level radioactive waste disposed, forty-five dollars ($45) per cubic foot of Class B low-level radioactive waste disposed, and fifty dollars ($50) per cubic foot of Class C low-level radioactive waste disposed. This total amount shall be collected by the operator of the disposal facility and transmitted monthly to the host state. One-third of this surcharge shall be allocated to the local government reimbursement fund for expenditure pursuant to subdivision (b) and two-thirds shall be allocated for regulatory activities including inspection, enforcement, and surveillance. Notwithstanding subparagraph (b) of paragraph (3) of subdivision (G) of Article 4 of the compact, the surcharge money shall not be collected or allocated for purposes of a third-party liability fund, or for purposes of closure, stabilization, and postclosure, or institutional

control of, the regional disposal facility.

(b) The money deposited in the local government reimbursement fund pursuant to subdivision (a) may be expended to offset the direct and indirect costs or increased burdens related to the hosting of the regional disposal facility, and shall be made available to the county in which the facility is located, and any other city, district, or other governmental organization within the county which incurs expenses as a result of hosting the facility. The department shall disburse these funds by requiring the local agency to enter into a contract with the department. An annual report of disbursements shall be included in the annual report prepared by the Southwestern Low-Level Radioactive Waste Commission pursuant to paragraph (7) of subdivision (G) of Article 3 of the compact.

(c) This section shall remain in effect until the effective date of the regulations adopted to implement Section 25878 or until January 1, 1993, whichever date is earlier; and on the date the regulations become effective or January 1, 1993, whichever is earlier, this section is repealed, unless a later enacted statute deletes or extends those dates.

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 1048

An act to amend Section 26227 of the Government Code, and to amend Sections 11818 and 11991.2 of, and to add Sections 11755.2 and 11755.5 to, the Health and Safety Code, relating to social programs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 26227 of the Government Code is amended to read:

26227. The board of supervisors of any county may appropriate and expend money from the general fund of the county to establish county programs or to fund other programs deemed by the board of

supervisors to be necessary to meet the social needs of the population of the county, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons.

The board of supervisors may contract with other public agencies or private agencies or individuals to operate such programs which the board of supervisors determines will serve public purposes. In the furtherance of any such program, the board of supervisors may make available to a public agency, nonprofit corporation, or nonprofit association any real property of the county which is not and, during the time of possession, will not be needed for county purposes, to be used to carry out such programs, upon terms and conditions determined by the board of supervisors to be in the best interests of the county and the general public, and the board of supervisors may finance or assist in the financing of the acquisition or improvement of real property and furnishings to be owned or operated by any such public agency, nonprofit corporation, or nonprofit association to carry out such programs, through a lease, installment sale, or other transaction, in either case without complying with any other provisions of this code relating to acquiring, improving, leasing, or granting the use of or otherwise disposing of county property.

SEC. 2. Section 11755.2 is added to the Health and Safety Code, to read:

11755.2. (a) The department may implement a program for the establishment of group homes for alcohol and drug abusers as provided for in Section 300x-4a of Title 42 of the United States Code.

(b) The department may establish the Resident-Run Housing Revolving Fund for the purpose of making loans to group resident-run homes in conformance with federal statutes and regulations. Any program for the purpose of making loans to group resident-run homes shall be a part of the Resident-Run Housing Revolving Fund. Any unexpended balances in a current program shall be transferred to the Resident-Run Housing Revolving Fund and are hereby appropriated for expenditure during the 1990–91 fiscal year. Appropriations for subsequent fiscal years shall be provided in the annual Budget Act. All loan payments received from previous loans shall be deposited in the Resident-Run Housing Revolving Fund, as well as all future collections. The Resident-Run Housing Revolving Fund shall be invested in the Pooled Money Investment Fund. Interest earned shall accrue to the Resident-Run Housing Revolving Fund and may be made available for future group resident-run home loans.

(c) The department may adopt regulations as are necessary to implement this section.

SEC. 3. Section 11755.5 is added to the Health and Safety Code, to read:

11755.5. (a) The Legislature finds and declares that the federal

government has established criteria for granting waivers to states to use funds available for substance abuse for the construction of new facilities or the rehabilitation of existing facilities, but not for land acquisition.

It is the intent of the Legislature that the department develop and administer waiver application criteria for capital construction and rehabilitation of alcohol recovery facilities and drug treatment facilities consistent with federal law.

It is the intent of the Legislature that the department have the flexibility to modify waiver application criteria to meet changing federal requirements.

(b) The department shall coordinate and administer waiver applications for capital construction and rehabilitation of alcohol recovery facilities and drug treatment facilities under Section 1915(b) of the Public Health Services Act (42 U.S.C. Sec. 300x-3(b)). The department shall give priority to programs which use these federal funds to make the facilities accessible to persons with disabilities or to modify or improve facilities that are already accessible. The department shall require the county to match one dollar ($1) cash for one dollar ($1) cash of those federal funds. The matching funds may come from county general or private nonprofit organization funds.

(c) The department shall adopt emergency regulations implementing this section. The Legislature declares that the adoption of these regulations, and any amendments thereto, shall be deemed an emergency necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 4. Section 11818 of the Health and Safety Code is amended to read:

11818. (a) Expenditures made by counties and contract providers which may be reimbursed from funds under this part shall include expenditures for personnel, facilities, supplies, maintenance, utilities, and management services which are necessary for the provision of services and activities specified in this article. The expenditures for facilities shall be determined through rent or depreciation as established in the state's Uniform Accounting Manual, disregarding depreciation on such a facility to the extent it was financed by state funds under this part, and any other expenditures which may be approved by the director. Reimbursement shall not be made for expenditures for the purchase or construction of buildings, except for such equipment items and remodeling expenses as may be provided for in regulations, for expenditures for purposes for which state reimbursement is claimed under any other provision of law, or for expenditures pursuant to Section 11755.5.

(b) The cost of services specified in the county alcohol program plan shall be actual costs as determined with standard accounting practices or a negotiated rate. Negotiated rate is a specific and fixed dollar rate for a specified unit of service provided. Negotiated rates

may be used as the cost of services only between the county and private providers. The negotiated rate shall be approved by the county prior to commencing services for reimbursement and the rate shal be based upon the projected cost of providing the services and projected revenues realized as a result of providing the services. The provider shall make available to the county information on prior years' actual cost of providing the services and actual revenues where the information is available.

SEC. 5. Section 11991.2 of the Health and Safety Code is amended to read:

11991.2. Expenditures subject to payment shall include: salaries of personnel, approved facilities and services provided through contract; operation, maintenance and service costs, depreciation of county facilities as established in the state's Uniform Accounting Manual, disregarding depreciation on the county facility to the extent it was financed by state funds under this part; lease of facilities where there is no intention to, nor option to, purchase; and other expenditures which may be approved by the director. They shall not include expenditures for initial capital improvement; the purchase or construction of buildings except for such equipment items and remodeling expenses as may be provided in regulations of the department or pursuant to Section 11755.5; compensation to members of a local advisory board on drug programs (except actual and necessary expenses incurred in the performance of official duties); or expenditure for a purpose for which state reimbursement is claimed under any other provision of 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:

Section 1915(b) of the Public Health Services Act (42 U.S.C. Sec. 300x-3(b)), as amended by the federal Anti-Drug Abuse Act of 1988 (P.L. 100-690), among other things, requires each state, as a contingency of receiving funds under the Alcohol and Drug Abuse and Mental Health Services Block Grant, to establish a revolving fund to provide loans to nonprofit, private entities for the provision of housing as self-supported and self-run alcohol and drug free recovery programs. The State Department of Alcohol and Drug Programs' federal block grant funds will be jeopardized if the revolving fund is not established. Moreover, the State Department of Alcohol and Drug Programs does not have the statutory authority to coordinate and administer a waiver application program for capital construction and rehabilitation of alcohol recovery facilities and drug treatment facilities under Section 1915(b) of the Public Health Services Act (42 U.S.C. Sec. 300x-3(b)), as amended by the federal Anti-Drug Abuse Act of 1988.

In order to implement these programs and to ensure full and timely receipt by the state of available federal funds and to provide authorization to counties regarding assistance for social programs

conducted by public agencies, nonprofit corporations, or nonprofit associations, it is necessary this act go into immediate effect.

CHAPTER 1049

An act to amend Section 11215 of, to amend, repeal, and add Section 11462 of, to add Sections 11404.5, 11462.6, and 11469 to, and to repeal Section 16501.7 of, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 11215 of the Welfare and Institutions Code is amended to read:

11215. (a) The department, with the advice and assistance of the County Welfare Directors' Association, the Chief Probation Officers' Association, the California Conference of Local Mental Health Directors, 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.

(b) (1) The performance standards required by this section 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).

(c) 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 use of, the information available from the Child Welfare Services Case Management System and the Level of Care Assessment Instrument as data sources for this report. The report shall also include the results of a cost study, conducted by the department, which specifies costs of group home providers for the 1993–94 fiscal year, and an analysis of the extent to which the schedule of rates reflects the costs of providing care and supervision for foster children.

SEC. 2. Section 11404.5 is added to the Welfare and Institutions Code, to read:

11404.5. By July 1, 1991, the department shall adopt regulations requiring the use of the Level of Care Assessment Instrument

developed pursuant to Section 11467, to determine the appropriate placement of children in out-of-home care.

SEC. 3. Section 11462 of the Welfare and Institutions Code is amended 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. 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 initially classified, for purposes of emergency regulations, 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 June 30, 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, or between July 1, 1989, and March 31, 1990.

(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 inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(g) (1) The standardized schedule of rates for fiscal year 1990–91 is:

Rate Classification Level	Point Ranges	FY 1990–91	
		Standard Rate	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

(2) Group home programs which generate the requisite number of points for RCL 13 or 14, which only accept children with special treatment needs as determined through the assessment process in subdivision (b) of Section 11467 and which have as part of their program measurable performance standards developed by the county of placement, shall be classified at RCL 13 or 14.

(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) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or

modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(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) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before July 1, 1995, deletes or extends that date.

SEC. 4. 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. 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 initially classified, for purposes of emergency regulations, 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 June 30, 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, or between July 1, 1989, and March 31, 1990.

(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 inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(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

(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) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(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) This section shall become operative on July 1, 1995.

SEC. 5. Section 11462.6 is added to the Welfare and Institutions Code, to read:

11462.6. The department shall adopt regulations regarding the Level of Care Assessment Instrument developed pursuant to Section 11467, to ensure that group home programs receive AFDC-FC rates consistent with the needs of the children they accept for placement. These regulations may specify, in a manner consistent with paragraph (2) of subdivision (f) of Section 11462, the conditions under which AFDC-FC rates may be adjusted for group home programs whose placements, as assessed pursuant to Section 11467, are not consistent with their rate classification level.

SEC. 6. Section 11469 is added to the Welfare and Institutions Code, to read:

11469. (a) By July 1, 1993, the department, in consultation with group home providers, the County Welfare Directors' Association, the Chief Probation Officers' Association, the California Conference of Local Mental Health Director and the State Department of Mental Health, shall develop performance standards and outcome measures for determining the effectiveness of the care and supervision, as defined in subdivision (b) of Section 11460, provided by group homes under the AFDC-FC program pursuant to Sections 11460 and 11462. These standards shall be designed to measure group home program performance for the client group that the group home program is designed to serve.

(1) The performance standards and outcome measures shall be designed to measure the performance of group home programs in areas over which the programs have some degree of influence, and in other areas of measurable program performance which the department can demonstrate are areas over which group home programs have meaningful managerial or administrative influence.

(2) These standards and outcome measures shall include, but are not limited to, the effectiveness of services provided by each group home program, and the extent to which the services provided by the group home assist in obtaining the child welfare case plan objectives for the child.

(3) In addition, when the group home provider has identified as part of its program for licensing, ratesetting, or county placement purposes, or has included as a part of a child's case plan by mutual agreement between the group home and the placing agency, specific mental health, education, medical, and other child-related services, the performance standards and outcome measures may also measure the effectiveness of those services.

(b) By January 1, 1994, the department shall submit a report to the appropriate policy and fiscal committees of the Legislature on the group home performance standards system, the standards and outcome measures developed, and the method by which the system

shall be implemented.

(c) Regulations regarding the implementation of the group home performance standards system required by this section shall be adopted no later than one year prior to implementation. The regulations shall specify both the performance standards system and the manner by which the AFDC-FC rate of a group home program shall be adjusted if performance standards are not met.

(d) Except as provided in subdivision (e), effective July 1, 1995, group home performance standards shall be implemented. Any group home program not meeting the performance standards shall have its AFDC-FC rate, set pursuant to Section 11462, adjusted according to the regulations required by this section.

(e) Effective July 1, 1995, group home programs shall be classified at rate classification level 13 or 14 only if all of the following are met:

(1) The program generates the requisite number of points for rate classification level 13 or 14.

(2) The program only accepts children with special treatment needs as determined through the assessment process pursuant to subdivision (b) of Section 11467.

(3) The program meets the performance standards designed pursuant to this section.

(f) Notwithstanding subdivision (d), the group home program performance standards system shall not be implemented prior to the implementation of the AFDC-FC performance standards system specified in Section 11215.

SEC. 7. Section 16501.7 of the Welfare and Institutions Code is repealed.

SEC. 8. It is the intent of the Legislature that the development and implementation of the group home performance standards required by Section 11469 of the Welfare and Institutions Code shall assist in the appropriate placement of children in out-of-home care, and shall not impede the ability of county placement agencies to find placements for hard-to-place children.

CHAPTER 1050

An act to amend Section 1597.531 of the Health and Safety Code, relating to family day care homes.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 1597.531 of the Health and Safety Code is amended to read:

1597.531. (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients

and guests in the amount of at least one hundred thousand dollars ($100,000) per occurrence and three hundred thousand dollars ($300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars ($300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.

(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Section 1351 of the Civil Code.

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 1051

An act to amend Sections 1275 and 15026 of, to add Section 15072 to, to amend, add, and repeal Section 15071 of, and to add and repeal Section 15071.1 of, the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 1275 of the Health and Safety Code is amended to read:

1275. (a) The state department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13, any reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the state department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any statute of this state including, but not limited to, the State Building Standards Law, Part 2.5 (commencing with Section 18901) of Division 13.

All regulations in effect on December 31, 1973, which were adopted by the State Board of Public Health, the State Department of Public Health, the State Department of Mental Hygiene, or the State Department of Health relating to licensed health facilities shall remain in full force and effect until altered, amended, or repealed by the director or pursuant to Section 25 or other provisions of law.

(b) Notwithstanding this section or any other provision of law, the Office of Statewide Health Planning and Development shall adopt and enforce regulations prescribing building standards for the adequacy and safety of health facility physical plants.

(c) The building standards adopted by the State Fire Marshal, and the Office of Statewide Health Planning and Development pursuant to subdivision (b), for the adequacy and safety of freestanding physical plants housing outpatient services of a health facility licensed under subdivision (a) or (b) of Section 1250 shall not be more restrictive or comprehensive than the comparable building standards established, or otherwise made applicable, by the State Fire Marshal and the Office of Statewide Health Planning and Development to clinics and other facilities licensed pursuant to Chapter 1 (commencing with Section 1200).

(d) Except as provided in subdivision (f), the licensing standards adopted by the state department under subdivision (a) for outpatient services located in a freestanding physical plant of a health facility licensed under subdivision (a) or (b) of Section 1250 shall not be more restrictive or comprehensive than the comparable licensing standards applied by the state department to clinics and other facilities licensed under Chapter 1 (commencing with Section 1200).

(e) Except as provided in subdivision (f), the state agencies specified in subdivisions (c) and (d) shall not enforce any standard applicable to outpatient services located in a freestanding physical plant of a health facility licensed pursuant to subdivision (a) or (b) of Section 1250, to the extent that the standard is more restrictive or comprehensive than the comparable licensing standards applied to clinics and other facilities licensed under Chapter 1 (commencing with Section 1200).

(f) All health care professionals providing services in settings authorized by this section shall be members of the organized medical staff of the health facility to the extent medical staff membership would be required for the provision of the services within the health facility. All services shall be provided under the respective responsibilities of the governing body and medical staff of the health facility.

(g) For purposes of this section, "freestanding physical plant" means any building which is not physically attached to a building in which inpatient services are provided.

SEC. 1.5. 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 clinical services of a health facility licensed pursuant to Section 1250 are provided and which is separated from a building in which hospital services are provided. If any one or more outpatient clinical services 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 (j) 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 (j) of Section 1250, operated by a city, city and county, or county.

SEC. 2. Section 15071 of the Health and Safety Code is amended to read:

15071. Construction or alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 shall conform to the provisions of the latest edition of Title 24 of the California Code of Regulations. The statewide office shall independently review and inspect these buildings. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (2) and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city, county, or city and county.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of the State Architect and the State Fire Marshal.

The statewide office shall continue to implement, and modify as necessary, criteria which was initially developed and implemented prior to July 2, 1989, to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails,

lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

This section shall remain in effect only until January 1, 1994, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3. Section 15071 is added to the Health and Safety Code, to read:

15071. Construction or alterations of buildings specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026 shall conform to the applicable provisions of the latest edition of Title 24 of the California Code of Regulations. The statewide office shall independently review and inspect these buildings. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city, county, or city and county. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 15026 shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, by the statewide office to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of

the State Architect and the State Fire Marshal.

The statewide office shall continue to implement, and modify as necessary, criteria which was initially developed and implemented prior to July 2, 1989, to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

This section shall become operative on January 1, 1994.

SEC. 3.5. Section 15071.1 is added to the Health and Safety Code, to read:

15071.1. A city, county, or city and county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) of subdivision (b) of Section 15026. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 15026 established or applied by a city, county, or city and county, shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

This section shall remain in effect only until January 1, 1994, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 4. Section 15072 is added to the Health and Safety Code, to read:

15072. (a) Notwithstanding any other provision of law, the statewide office shall, on or before January 1, 1991, set forth and implement criteria for the alteration or construction of buildings specified in subdivision (a) of Section 15026 which provide for onsite field review and approval by construction advisors of the statewide office and provide for preapproval of project plans which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

(b) Onsite field reviews shall be performed by available area construction advisors of the statewide office. The area construction

advisors shall have the responsibility to coordinate any approvals required by the State Fire Marshal. The approvals may be obtained prior to the start of construction or on a deferred basis, at the discretion of the area construction advisor.

(c) An annual building permit project classified as a "field review" shall be reviewed and approved by the area construction advisor.

(d) Effective January 1, 1991, all plans submitted for the alteration or construction of buildings specified in subdivision (a) of Section 15026 to the statewide office for plan review shall be evaluated to determine if it is exempt from the plan review process or if it qualifies for an expedited plan review. The evaluation shall give priority to plans that are for minor renovation, remodeling, or installation of equipment.

SEC. 5. It is the intent of the Legislature that outpatient clinic service projects submitted to the Office of Statewide Health Planning and Development after January 1, 1990, but before the effective date of this section, may be withdrawn from the Office of Statewide Health Planning and Development, at the option of the applicant, and resubmitted to the local building jurisdiction. The Office of Statewide Health Planning and Development shall return the unused portion, if any, of any fee already paid to the Office of Statewide Health Planning and Development for review.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. 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 provide for review of hospital-owned, freestanding outpatient facilities by the local building authorities, thereby expediting the construction of these needed health facilities, it is necessary that this act take effect immediately.

CHAPTER 1052

An act to amend Sections 15 and 50 of, and to add Sections 15.3, 15.5, and 27.1 to, the San Gorgonio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961), relating to the San Gorgonio Pass Water Agency, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 15 of the San Gorgonio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961) is amended to read:

Sec. 15. The agency shall have the power:

(a) To have perpetual succession.

(b) To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the agency.

(e) To acquire, or contract to acquire, waterworks or a waterworks system, waters, water rights, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the agency, and to complete, extend, add to, repair or otherwise improve any waterworks or waterworks system acquired by it as herein authorized.

(f) To construct, maintain, improve and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the agency, and to provide by ordinance regulations binding upon all persons to govern the use of such facilities including regulations imposing reasonable charges for the use thereof. Violation of any such regulation shall be a misdemeanor.

(g) To lease of and from any person, firm or public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell water under the control of the agency to cities, and to other public corporations and public agencies within the agency, and to the inhabitants of such cities and of other territory within the agency, and to persons, corporations, and other private agencies within the agency for use within said agency without any preference; also to sell

water under the control of the agency to any city, or any company or public agency serving a city, which city is located wholly or partially within the agency, for distribution only within such city; and it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers.

(h) To supply and deliver agency water to publicly owned and operated golf courses and other publicly owned and operated recreational facilities and to public schools, school districts and public school properties, and to fix and establish special rates, terms and conditions for the use and sale of water for each of these purposes; provided, however, that this provision shall not be construed to indicate legislative intent either for or against the existence of any power of the agency to furnish water to other persons, firms or corporations at just and reasonable rates.

(i) To exercise the right of eminent domain to take any property necessary to supply the agency or any portion thereof with water. The agency in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. In no event shall the agency exercise the power of eminent domain with respect to property situated outside the boundaries of the agency, unless it first obtains the consent of the board of supervisors of the county in which such property is located to such exercise of power.

(j) To issue bonds, borrow money, and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which expenses may include fees of attorneys and others employed to conduct the formation proceedings.

(k) To issue negotiable promissory notes, provided that the notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of the agency; and provided further that the maturity shall not be later than five years from the date thereof and that the total aggregate amount of such notes outstanding at any one time shall not exceed the lesser of either one million five hundred thousand dollars ($1,500,000) or 2 percent of the assessed valuation of the taxable property in the agency, or, if that assessed valuation is not obtainable, 2 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his or her certificate.

(*l*) To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency,

including its formation expenses and any warrants issued therefor.

(m) To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit the use of such water during such periods for specific uses which the agency may from time to time find to be nonessential.

(n) To prescribe and define by ordinance, the restrictions, prohibitions and exclusions referred to in subdivision (m) hereof. Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within that time in three public places within the agency.

(o) To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(p) To provide by ordinance of its board of directors for the pensioning of officers or employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of officers or employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such officers or employees, and to provide in such ordinance for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of officers or employees before such pensions shall be available to them.

(q) To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses and protection of the agency or its inhabitants or the owners of rights to water therein; provided, however, that all waters of the Whitewater River system are excluded from the provisions hereof, except such waters of said system as may be lawfully acquired by the San Gorgonio Pass Water Agency.

(r) Subject to the limitations in subdivision (i), to join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits,

the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. Particularly, but not exclusively, the agency may contract with the State of California for delivery of water under the State Water Plan. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the agency, or an improvement district thereof, incurs an indebtedness or liability exceeding in any year the income and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose, such election to be called and held, so far as practicable, in the same manner as bond elections for the agency. The exact form of such contract need not be available at the time of the special election, but the (1) purpose of the contract; (2) maximum amount of the indebtedness created thereby; (3) maximum term of repayment, and (4) maximum interest rate on such indebtedness shall be known and included in the proposition or measure submitted to the qualified electors of the agency, or an improvement district thereof, at such special election.

(s) To commence, maintain, intervene in, defend and compromise, in the name of the agency, and to assume the costs and expenses of any and all actions and proceedings which involve or affect the ownership or use of water or water rights, used or useful for any purpose of the agency, or a common benefit to the lands within the agency or inhabitants of the agency, and in any such action or proceeding the agency may act as a representative of any class or classes of users of water within the agency, producers of water within the agency or owners of rights to water used or useful within the agency, or owners of property within the agency.

(t) Distribute water to persons in exchange for ceasing or reducing groundwater extractions and to fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of groundwater, and to such end an agency may become a party to such contract and pay from the agency funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the agency are directly or indirectly benefited by the resulting replenishment.

(u) To issue bonds under Section 28 of this act for the purpose of providing money required to be paid by this agency to the State of California or any agency thereof under any contract which shall be made with it, or as all or part of the terms and conditions under which the corporate area of the agency may be annexed to and become a part of any metropolitan water district organized under the Metropolitan Water District Act. The amount of the bonds may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

(v) To issue revenue bonds for any purpose for which general obligation bonds may be issued, and for any purpose for which such bonds could be issued under the provisions of the Revenue Bond Law of 1941 or any other law which by its terms is applicable to the agency.

(w) To use the Improvement Act of 1911 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by the Improvement Act of 1911 on the various boards, officers and agents of cities shall be exercised by the respective boards, officers and agents of the agency. In the application of the Improvement Act of 1911 to proceedings instituted by the agency, the terms used in the Improvement Act of 1911 shall have the following meanings:

(1) "City council" and "council" shall mean the board of directors of the agency.

(2) "Municipality" and "city" shall mean the agency.

(3) "Clerk" and "city clerk" shall mean the secretary.

(4) "Superintendent of streets," "street superintendent" and "city engineer" shall mean the chief engineer of the agency.

(5) "Tax collector" shall mean the county tax collector.

(6) "Treasurer" and "city treasurer" shall mean the treasurer of the agency.

(7) "Mayor" shall mean the president of the board of directors of the agency.

(8) "Right-of-way" shall mean any parcel of land in, on, under or through which a right-of-way or easement has been granted to the agency for the purpose of constructing and maintaining any works or improvements of the agency.

Any certificates or documents required to be filed or recorded in the office of the superintendent of streets or street superintendent

shall be filed and recorded in the office of the Secretary of the San Gorgonio Pass Water Agency.

(x) To disseminate information concerning the activities of the agency; and in instances in which it shall be found by two-thirds vote of the board of directors to be necessary for the protection of agency rights and properties to disseminate information concerning such rights and properties, also concerning matters which in the judgment of the board may adversely affect such rights and properties; provided, that expenditures during any fiscal year for such purposes shall not exceed one cent ($0.01) for each one hundred dollars ($100) of assessed valuation of such agency.

SEC. 2. Section 15.3 is added to the San Gorgonio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961), to read:

Sec 15.3. The maximum rate of interest the agency shall be authorized to pay on any of its bonds, promissory notes, or other obligations shall not exceed the higher of 8 percent per annum, the maximum interest rate for municipal water district bonds as set forth in Section 71953 of the Water Code, or the maximum interest rate set forth in a general statute governing local agencies or districts.

SEC. 3. Section 15.5 is added to the San Gorgonio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961), to read:

Sec. 15.5. It is the intent of the Legislature that, in allocating water received from the State Water Project pursuant to this act, the highest priority shall be given to eliminating groundwater overdraft conditions within any agency or district receiving the water.

SEC. 4. Section 27.1 is added to the San Gorgonio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961), to read:

Sec. 27.1. (a) In addition to the other powers provided in this act, the agency may establish and impose a facility capacity fee, which is in the nature of a connection fee, for the right to make a new retail connection to the water distribution system of any retail water distributor within the agency that obtains all or any portion of its water supplies from the agency. The necessity for the fee and the amounts thereof shall be determined, established, imposed, collected, and used only in the manner provided in this section.

(b) At such time or times as the board of directors shall find and determine that its then existing water importation, production, treatment, transportation, or delivery facilities or other related works, are inadequate to meet anticipated demand, the board of directors may, as provided in this section, adopt and carry out (1) a plan for obtaining, or constructing additional facilities, works, property, improvements, and supplies of water, (2) a plan for increasing or enlarging, as may be appropriate, its then existing capacity and facilities for obtaining, importing, producing, treating, and delivering that additional quantity of water to retail water distributors within the agency, and (3) a plan for financing the cost or reimbursing the agency for advancing the cost of acquiring or constructing those facilities, works, property, improvements, and supplies of water and for allocating that cost among lands within the

agency, which lands by reason of new development or new construction thereon will need new water service and will be benefited by making the additional supplies of water available for purchase by the retail water distributors that will supply those lands with water.

(c) The facility capacity fee referred to in subdivision (a) shall be adopted, established, and imposed only following a public hearing and in accordance with the requirements set forth in Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code, as it now exists or may hereafter be amended.

(d) Following the public hearing or hearings, the board of directors (1) shall determine the extent of the need for the additional property and supplies of water to be supplied by the agency, and (2) shall determine whether then existing facilities and other works and improvements of the agency are adequate to import, produce, treat, transport, and deliver those additional quantities of water. If the board of directors determines that there is an additional need or that the agency's then existing facilities, works, property, and improvements are inadequate to serve that water, or both, the board of directors shall adopt the plan or plans specified in subdivision (b), and shall establish the amount of the facility capacity fee, if any, which shall be imposed to finance the cost or reimburse the agency for advancing the cost of acquiring or constructing facilities, works, property, improvements, and supplies of water to satisfy existing or anticipated demand.

(e) In making its determinations as to how to allocate the costs of the plan or plans within water service areas of the agency, the board of directors shall determine the amount of the facility capacity fee to be imposed for and upon each new connection to the delivery facilities of the retail water distributors that will supply those lands with water. The facility capacity fee shall be fixed and determined at an amount reasonably related to the benefit to the land, when the volume of water to be delivered to the new retail connection is considered.

(f) The board of directors may contract with the counties in which the agency is located, or with cities located within the agency, for the collection of the facility capacity fee along with building permit fees or other fees related to the improvement of property, or may contract for collection of the facility capacity fee by the retail water distributor.

(g) The proceeds of the facility capacity fee imposed and collected pursuant to this section shall be used exclusively by the board of directors for purposes authorized by this section as specified in the plans adopted pursuant to subdivisions (b), (d), and (e).

(h) Any action taken by the board of directors pursuant to this section shall be by resolution.

(i) Any judicial action or proceeding to attack, review, set aside, void, or annul any resolution imposing a facility capacity fee of the agency, or a resolution modifying or amending an existing fee duly

enacted and adopted by the agency, shall be commenced within 120 days of the effective date of the resolution. Any such action or proceeding shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 5. Section 50 of the San Gorgonio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961) is amended to read:

Sec. 50. The agency, by ordinance, may fix, on or before the first day of July in any calendar year, a water standby or availability charge within the agency or in any improvement district thereof to which water is made available by the agency through underground or by surface facilities, whether the water is actually used or not. The standby charge shall not exceed ten dollars ($10) per acre per year for each acre of land within the agency or any improvement district thereof or ten dollars ($10) per year for any parcel of less than one acre. The ordinance fixing a standby charge shall be adopted by the board only after adoption of a resolution setting forth the particular schedule or schedules of charges proposed to be established by ordinance and after notice and hearing in the manner prescribed in Sections 54984.4 and 54984.5 of the Government Code, concerning providing notice and a hearing with regard to levying a charge. The ordinance fixing a standby charge may establish schedules varying the charges according to land uses, water uses, and degree of water availability. On or before the third Monday in August, the board shall furnish in writing to the board of supervisors and the county auditor of each affected county a description of each parcel of land within the agency upon which a charge is to be levied and collected for the current fiscal year, together with the amount of standby charge fixed by the agency on each parcel of land. The board shall direct that, at the time and in the manner required by law for the levying of taxes for county purposes, the board of supervisors shall levy, in addition to any other tax it levies, a standby charge in the amounts for the respective parcels fixed by the board. All county officers charged with the duty of collecting taxes shall collect agency standby charges with the regular tax payments to the county. Such charges shall be collected in the same form and manner as county taxes are collected and shall be paid to the agency. Charges fixed by the agency shall be a lien on all the property benefited thereby. Liens for such charges shall be of the same force and effect as other liens for taxes, and their collection may be enforced by the same means as provided for the enforcement of liens for state and county taxes.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide financing for urgently needed water facilities within the San Gorgonio Pass Water Agency at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1053

An act to amend Section 3041.5 of the Penal Code, relating to prisoners.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.

(B) Three years after any hearing at which parole is denied if the

prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(C) Five years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than two murders, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

SEC. 2. The amendments to Section 3041.5 of the Penal Code made by this act shall be applicable only to offenses committed before July 1, 1977, or on or after January 1, 1991.

CHAPTER 1054

An act to amend Sections 25160 and 25161 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 25160 of the Health and Safety Code is amended to read:

25160. (a) For purposes of this chapter, "manifest" means a shipping document originated and signed by a generator of hazardous waste which contains all of the information required by the department and which complies with all applicable federal and state regulations.

(b) (1) Any person generating hazardous waste which is transported, or submitted for transportation, for offsite handling,

treatment, storage, disposal, or any combination thereof, shall complete a manifest prior to the time the waste is transported or offered for transportation, and shall designate on that manifest the facility to which the waste is to be shipped for the handling, treatment, storage, disposal, or combination thereof. The manifest shall be completed, as required by the department. The generator shall provide the manifest to the person who will transport the hazardous waste, who is the driver, if the hazardous waste will be transported by vehicle, or the person designated by the railroad corporation or vessel operator, if the hazardous waste will be transported by rail or vessel. The generator shall use the standard California Uniform Hazardous Waste Manifest supplied by the department for all shipments of hazardous waste for which a manifest is required, except as provided in paragraph (2). A manifest shall only be used for the purposes specified in this chapter, including, but not limited to, identifying materials which the person completing the manifest reasonably believes are hazardous waste. Within 30 days after transporting hazardous waste, or submitting hazardous waste for transport, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator and the transporter.

(2) Any person generating hazardous waste which is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, outside of the state, shall, whether or not the waste is determined to be hazardous by the importing country or state, complete a standard California Uniform Hazardous Waste Manifest, or in those cases where the receiving state requires the use of its own form of manifest, the generator shall complete the manifest required by the receiving state and sign and attach to the front of the manifest submitted to the department pursuant to paragraph (1), as well as to the original manifest accompanying the waste, a one-page out-of-state manifest cover form supplied by the department.

(3) Within 30 days after transporting hazardous waste, or submitting hazardous waste, for transport out of state, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator, all transporter, excepting intermediate rail transporters, and the out-of-state facility operator. If within 35 days after the initial shipment, or for exports by water to foreign countries, 60 days after the initial shipment, the generator has not received a copy of the manifest signed by all transporters and the facility operator, the generator shall contact the owner or operator of the designated facility to determine the status of the hazardous waste and to request that the owner or operator immediately provide a signed copy of the manifest to the generator. If within 45 days after the initial shipment or, for exports by water to foreign countries, 90 days after the initial

shipment, the generator has not received a copy of the signed manifest from the facility owner or operator, the generator shall submit an exception report to the department.

(c) The department shall determine the form and manner in which a manifest shall be completed and the information that the manifest shall contain. The form of each manifest and the information requested on each manifest shall be the same for all hazardous wastes, regardless of whether the hazardous wastes are also regulated pursuant to the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), or by regulations adopted by the United States Department of Transportation. However, the form of the manifest and the information required shall be consistent with federal regulations.

Pursuant to federal regulations, the department may require information on the manifest in addition to the information required by federal regulations, including, but not limited to, the number of the vehicle which will transport the hazardous waste, as specified in the certificate of compliance issued pursuant to Section 25168.3.

(d) (1) Any person who transports hazardous waste in a vehicle shall have a manifest in his or her possession while transporting the hazardous waste. The manifest shall be shown upon demand to any representative of the department, officer of the California Highway Patrol, any local health officer, or any local public officer designated by the director. If the hazardous waste is transported by rail or vessel, the railroad corporation or vessel operator shall comply with Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations and shall also enter on the shipping papers any information concerning the hazardous waste which the department may require.

(2) Any person who transports any waste, as defined by Section 25124, and who is provided with a manifest for that waste shall, while transporting that waste, comply with all requirements of this chapter, and the regulations adopted pursuant thereto, concerning the transportation of hazardous waste.

(3) Any person who transports hazardous waste shall transfer a copy of the manifest to the facility operator at the time of delivery, or to the person who will subsequently transport the hazardous waste in a vehicle. Any person who transports hazardous waste and then transfers custody of that hazardous waste to a person who will subsequently transport that waste by rail or vessel shall transfer a copy of the manifest to the person designated by the railroad corporation or vessel operator, as specified by Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations.

(4) Any person transporting hazardous waste by motor vehicle, rail, or water shall certify to the department, at the time of initial registration and at the time of renewal of that registration pursuant to this article, that the transporter is familiar with the requirements of this section, the department regulations, and federal laws and

regulations governing the use of manifests.

(e) (1) Any facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, which was transported with a manifest pursuant to this section, shall submit a copy of the manifest to the department within 30 days after receiving the hazardous waste. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the facility operator. In instances where the generator or transporter is not required by the generator's state or federal law to sign the manifest, the facility operator shall require the generator and all transporters, excepting intermediate rail transporters, to sign the manifest before accepting the waste at any facility in this state.

(2) Any treatment, storage, or disposal facility receiving hazardous waste generated outside this state, may only accept the waste for treatment, storage, disposal, or any combination thereof, if the waste is accompanied by a completed standard California Uniform Hazardous Waste Manifest.

SEC. 2. Section 25161 of the Health and Safety Code is amended to read:

25161. (a) The department shall adopt and enforce all rules and regulations necessary and appropriate to accomplish the purposes of Section 25160.

(b) The department shall develop a data base which tracks all hazardous waste shipped in and out of state for handling, treatment, storage, disposal, or any combination thereof, which includes all of the following information:

(1) The state or country receiving the waste.

(2) Month and year of shipment.

(3) Type of hazardous waste shipped.

(4) Mode or modes of transportation used.

(5) The manner in which the waste was handled at its final destination, such as incineration, treatment, recycling, land disposal, or a combination thereof.

(c) The department shall, by March 1, of every calendar year, submit a report to the Legislature setting forth all of the following information:

(1) The total volume in tons of hazardous waste generated in the state and shipped offsite for handling, treatment, storage, disposal, or any combination thereof.

(2) The total volume in tons of hazardous waste generated in the state and shipped in and out of the state for handling, treatment, storage, disposal, or any combination thereof, including all of the following information:

(A) The state or country receiving the hazardous waste.

(B) Month and year of shipment.

(C) Type of hazardous waste shipped.

(D) Mode or modes of transportation used.

(E) The manner in which the waste was handled at its final

destination, such as incineration, treatment, recycling, land disposal, or a combination thereof.

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 1055

An act to amend Sections 17052.14 and 23612.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 17052.14 of the Revenue and Taxation Code is amended to read:

17052.14. (a) (1) For taxable years beginning on or after January 1, 1989, and before January 1, 1994, there shall be allowed as a credit against the "net tax" (as defined in Section 17039), an amount equal to 40 percent of the cost of qualified property purchased on or after January 1, 1989, and before January 1, 1994. The amount of the allowable credit shall be claimed as provided in subdivision (c).

(2) Notwithstanding the total cost of the qualified property, the amount of cost which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed six hundred twenty-five thousand dollars ($625,000) per facility during the five-year credit period.

(3) The basis of any qualified property, as defined in paragraph (1) of subdivision (d), 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.

(b) The credit shall only be allowed by this section if:

(1) The total adjusted basis of all qualified property owned on the last day of the taxable year exceeds the largest total adjusted basis of all qualified property owned at any one time during the base year.

(2) The total capacity of qualified property to use recycled materials on the last day of the taxable year exceeds the largest total

capacity of qualified property at any one time during the base year. If a qualified property owned in the base year is replaced by qualified property of larger capacity, the eligible costs shall be proportional to the increase in capacity.

(c) The amount of the allowable credit shall be claimed as follows:

(1) Twenty percent of the cost, as limited by paragraph (2) of subdivision (a), shall be allowed for the taxable year of purchase.

(2) Fifteen percent of the cost, as limited by paragraph (2) of subdivision (a), shall be allowed for the taxable year immediately succeeding the taxable year of purchase.

(3) Five percent of the cost, as limited by paragraph (2) of subdivision (a), shall be allowed for the taxable year immediately succeeding the taxable year specified in paragraph (2).

(d) (1) "Qualified property" means machinery or equipment located within California, which is used by the taxpayer exclusively to manufacture finished products composed of at least 50 percent secondary waste material with at least 10 percent of which is composed of postconsumer waste generated from within California. "Qualified property" may include manufacturing equipment which utilizes 100 percent secondary waste, including at least 80 percent postconsumer waste where all of that material is contained within a finished product regardless of the finished product's percent postconsumer content. "Qualified property" includes, but is not limited to, deinking equipment utilized in the production of fine quality paper and equipment utilized to reclaim plastic which is used either as a raw material by a manufacturer or is sold to a manufacturer for use in the manufacture or fabrication of finished products.

(2) "Postconsumer waste" is only those products generated within California by a business or consumer which have served their intended end uses and would normally be disposed of as solid waste, having completed their life cycle as a consumer item.

(3) "Secondary waste" means fragments of products or finished products of a manufacturing process generated within California, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(4) "Finished product" means a marketable product or component thereof that has an economic value to a consumer and is ready to be used without the requirement of further alteration of its form.

(5) "Base year" is the taxable year immediately preceding the taxable year for which the credit allowed by this section is claimed.

(e) The California Integrated Waste Management Board shall do all of the following:

(1) Certify that the qualified property is purchased and used by the taxpayer as specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Provide an annual listing to the Franchise Tax Board, (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the California Integrated Waste Management Board), of the qualified taxpayers who were issued the certification.

(3) Provide the taxpayer with a copy of the certification to retain for his or her records.

(f) The taxpayer shall do all of the following:

(1) Provide the California Integrated Waste Management Board with documents, as deemed necessary by the California Integrated Waste Management Board, verifying the purchase of the qualified property and that the machinery or equipment meets the recycling requirements specified in this section.

(2) Retain for his or her records a copy of the certificate issued by the California Integrated Waste Management Board specified in paragraph (1) of subdivision (e).

(g) In the case where the credit allowed by this section exceeds the "net tax," for any taxable year for which a credit is allowed by subdivision (c), the excess may be carried over to reduce the "net tax," in the following year, and succeeding years if necessary, until the credit is exhausted.

(h) If a taxpayer disposes of or no longer uses the qualified property as defined in subdivision (d), then any amount that would have been otherwise allowed as a credit for the taxable year of disposition or nonuse shall not be allowed.

(i) 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 and wife who file separate returns, the credit may be taken by either or equally divided between them.

(j) The California Integrated Waste Management Board shall, no later than March 1, 1994, submit a report to the Legislature evaluating the impact of the tax expenditure in this section. The report shall include information about the number of taxpayers claiming the credit, the total dollar amount of credit allocated, and the equipment for which the credit was used. The report shall also determine to what extent, if any, the tax expenditure authorized by this section increased recycling activities in California. The California Integrated Waste Management Board shall work cooperatively with the Franchise Tax Board to determine the relevant tax return data necessary to complete the report and the time the data is required. The Franchise Tax Board shall be responsible for providing the data to the California Integrated Waste

Management Board.

(k) This section shall remain in effect only until December 1, 1994, and as of that date is repealed, unless a later enacted statute, which is chaptered before December 1, 1994, deletes or extends that date. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 2. Section 23612.5 of the Revenue and Taxation Code is amended to read:

23612.5. (a) (1) For income years beginning on or after January 1, 1989, and before January 1, 1994, there shall be allowed as a credit against the "tax" (as defined in Section 23036), an amount equal to 40 percent of the cost of qualified property purchased on or after January 1, 1989, and before January 1, 1994. The amount of the allowable credit shall be claimed as provided in subdivision (c).

(2) Notwithstanding the total cost of the qualified property, the amount of cost which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed six hundred twenty-five thousand dollars ($625,000) per facility during the five-year credit period.

(3) The basis of any qualified property, as defined in paragraph (1) of subdivision (d), 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.

(b) The credit shall only be allowed by this section if:

(1) The total adjusted basis of all qualified property owned on the last day of the income year exceeds the largest total adjusted basis of all qualified property owned at any one time during the base year.

(2) The total capacity of qualified property to use recycled materials on the last day of the income year exceeds the largest total capacity of qualified property any one time during the base year. If a qualified property owned in the base year is replaced by qualified property of larger capacity, the eligible costs shall be proportional to the increase in capacity.

(c) The amount of the allowable credit shall be claimed as follows:

(1) Twenty percent of the cost, as limited by paragraph (2) of subdivision (a), shall be allowed for the income year of purchase.

(2) Fifteen percent of the cost, as limited by paragraph (2) of subdivision (a), shall be allowed for the income year immediately succeeding the income year of purchase.

(3) Five percent of the cost, as limited by paragraph (2) of subdivision (a), shall be allowed for the income year immediately succeeding the income year specified in paragraph (2).

(d) (1) "Qualified property" means machinery or equipment located within California, which is used by the taxpayer exclusively to manufacture finished products composed of at least 50 percent secondary waste material with at least 10 percent of which is composed of postconsumer waste generated from within California. "Qualified property" may include manufacturing equipment which utilizes 100 percent secondary waste, including at least 80 percent

postconsumer waste where all of that material is contained within a finished product regardless of the finished product's percent postconsumer content. "Qualified property" includes, but is not limited to, deinking equipment utilized in the production of fine quality paper and equipment utilized to reclaim plastic which is used either as a raw material by a manufacturer or is sold to a manufacturer for use in the manufacture or fabrication of finished products.

(2) "Postconsumer waste" is only those products generated within California by a business or consumer which have served their intended end uses and would normally be disposed of as solid waste, having completed their life cycle as a consumer item.

(3) "Secondary waste" means fragments of products or finished products of a manufacturing process generated within California, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(4) "Finished product" means a marketable product or component thereof that has an economic value to a consumer and is ready to be used without the requirement of further alteration of its form.

(5) "Base year" is the income year immediately preceding the income year for which the credit allowed by this section is claimed.

(e) The California Integrated Waste Management Board shall do all of the following:

(1) Certify that the qualified property is purchased and used by the taxpayer as specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Provide an annual listing to the Franchise Tax Board, (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the California Integrated Waste Management Board), of the qualified taxpayers who were issued the certification.

(3) Provide the taxpayer with a copy of the certification to retain for its records.

(f) The taxpayer shall do all of the following:

(1) Provide the California Integrated Waste Management Board with documents, as deemed necessary by the California Integrated Waste Management Board, verifying the purchase of the qualified property and that the machinery or equipment meets the recycling requirements specified in this section.

(2) Retain for its records a copy of the certificate issued by the California Integrated Waste Management Board specified in paragraph (1) of subdivision (e).

(g) In the case where the credit allowed by this section exceeds the "tax," for any income year for which a credit is allowed by subdivision (c), the excess may be carried over to reduce that "tax," in the following year, and succeeding years if necessary, until the

credit is used.

(h) If a taxpayer disposes of or no longer uses the qualified property as defined in subdivision (d), then any amount that would have been otherwise allowed as a credit for the income year of disposition or nonuse shall not be allowed.

(i) 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.

(j) The California Integrated Waste Management Board shall, no later than March 1, 1994, submit a report to the Legislature evaluating the impact of the tax expenditure in this section. The report shall include information about the number of taxpayers claiming the credit, the total dollar amount of credit allocated, and the equipment for which the credit was used. The report shall also determine to what extent, if any, the tax expenditure authorized by this section increased recycling activities in California. The California Integrated Waste Management Board shall work cooperatively with the Franchise Tax Board to determine the relevant tax return data necessary to complete the report and the time the data is required. The Franchise Tax Board shall be responsible for providing the data to the California Integrated Waste Management Board.

(k) This section shall remain in effect only until December 1, 1994, and as of that date is repealed, unless a later enacted statute, which is chaptered before December 1, 1994, deletes or extends that date. However, any unused credit may continue to be carried forward, as provided in subdivision (g), 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 1056

An act to amend Section 4497.12 of the Penal Code, and to amend Section 7 of Chapter 1519 of the Statutes of 1986, relating to jails.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 4497.12 of the Penal Code is amended to read:

4497.12. (a) 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.

(b) The minimum county match required by subdivision (a), with regard to the following, need not be on a pro rata basis:

(1) The City and County of San Francisco.

(2) Alameda County.

(3) San Benito County.

(4) Santa Clara County.

(5) Santa Cruz County.

SEC. 2. Section 7 of Chapter 1519 of the Statutes of 1986 is amended to read:

Sec. 7. (a) County match on projects funded under this act 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 Jail Capital Expenditure Fund regulations, which regulations may be amended.

The minimum county match required by this subdivision, with regard to the following, need not be on a pro rata basis:

(1) The City and County of San Francisco.

(2) Alameda County.

(3) San Benito County.

(4) Santa Clara County.

(5) Santa Cruz County.

(b) The board shall establish construction cost controls and shall set forth in regulation procedures for setting maximum state funding levels for appropriate construction unit costs, including cost per bed for specified categories of facilities and cost per square foot. These cost norms 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 5 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.

(c) The board shall administer the funds allocated in this act to adult jail facilities, according to existing County Jail Capital Expenditure Fund regulations, except as those regulations may be amended to comply with the provisions of this act.

(d) Prior to entering into a contract with a county, the board shall review and approve the following county submissions regarding the facility proposed for funding:

(1) The compliance of architectural plans with minimum jail standards.

(2) County compliance with legal requirements for exclusion of

juveniles from adult facilities.

(3) County plans for provision of separate housing for inebriates and mentally ill prisoners.

(4) County documentation of its use of alternatives to incarceration.

(5) County project proposals.

(e) The board shall review and, if necessary, comment on the following county submissions prior to entering into a contract for funds under this act:

(1) County needs assessment.

(2) Project proposals and drawings, to evaluate the workability and appropriateness of the approach chosen by the county.

(3) Project staffing plans and life cycle cost analysis.

(f) Prior to releasing any funds to a county, the board shall also review construction cost levels in the funded projects for compliance with cost control regulations.

SEC. 3. The Legislature hereby declares that because of the exorbitant county costs associated with the earthquake of 1989, for the City and County of San Francisco and the Counties of Alameda, San Benito, Santa Clara, and Santa Cruz, the county match requirements of the County Correctional Facility Capital Expenditure Bond Act of 1986 and the County Correctional Facilities Capital Expenditure and Youth Facility Bond Act of 1988 need not be on a pro rata basis. However, under no circumstances shall the match for any project be less than 25 percent.

CHAPTER 1057

An act to amend Section 4497.12 of the Penal Code, relating to county jails.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 4497.12 of the Penal Code is amended to read:

4497.12. (a) County match on projects funded under this chapter shall be a minimum of 25 percent of the total project costs.

(b) The county match requirement imposed upon counties pursuant to the receipt of state moneys shall not be required to be made on a pro rata basis where the requirement would impede the expeditious and equitable construction of county correctional facilities. However, under no circumstances shall the county match for any county project be less than 25 percent.

(c) 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.

SEC. 2. The Legislature hereby finds and declares that rural counties, due principally to the chronically depressed economies of these communities, are unable to meet the current matching fund requirements in order to receive state funding for local correctional facilities. Therefore, in order to facilitate the expeditious and equitable construction of local correctional facilities, it is essential that this act be given effect.

CHAPTER 1058

An act to add Chapter 21 (commencing with Section 78201) to Division 22 of the Food and Agricultural Code, relating to agriculture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Chapter 21 (commencing with Section 78201) is added to Division 22 of the Food and Agricultural Code, to read:

CHAPTER 21. CALIFORNIA ASPARAGUS COMMISSION

Article 1. Declaration and General Provisions

78201. The production and marketing of asparagus constitutes an important industry of this state which not only provides substantial and necessary revenues for the state and employment for its citizens, but also furnishes food vital to the public.

78202. The maintenance of the asparagus industry of California is necessary to assure the consuming public of a continuous supply of this product and the maintenance of needed levels of income for those engaged in the industry.

78203. The production and marketing of asparagus produced in this state is hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

78204. No action taken by the commission, or by any individual in accordance with this chapter or with regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory

or common law against monopolies or combinations in restraint of trade.

78205. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the 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.

78206. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of a particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

78207. A commission form of administration created by this chapter is designed to deal with the broad fields of development, maintenance, and expansion of markets; marketing research; advertising and promotion; and production and processing research.

Article 2 Definitions

78210. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

78211. "Asparagus" means all types of vegetables grown in District 1 and District 2 from the plant family Liliaceae or Lily; Genus, Asparagus officinalis.

78212. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

78213. "Commission" means the California Asparagus Commission.

78214. (a) Except as otherwise provided in Section 78225.5, "districts" consist of the following geographical areas:

(1) District 1 consists of the Counties of Alameda, Alpine, Amador, Calaveras, Contra Costa, Sacramento, San Joaquin, San Mateo, Sutter, Yolo, the City and County of San Francisco, and all other counties north of those counties to the Oregon border which are not included in any other district.

(2) District 2 consists of the Counties of Fresno, Inyo, Kern, Kings, Los Angeles, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tuolumne, Tulare, and Ventura.

(b) The boundaries of any district may be changed by a two-thirds vote of the membership of the commission, which is concurred in by the director, when necessary to ensure proper representation by

producers. These boundaries need not coincide with county lines.

78215. "Handler" means any person engaged in marketing of asparagus which the person has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker, processor, or otherwise.

78216. "Market" or "marketing" means to sell asparagus.

78217. "Market research" means any investigation, development, analysis, or use of information relating to the marketing, sales, or promotion of asparagus in this state and nationally and internationally, including, but not limited to, trade practices, consumer trends, promotion, sales, and advertising.

78218. "Marketing year" means the period beginning January 1 of any year and extending through December 31 of that same year.

78219. "Production research" means any cultural and biological research relating to field production of asparagus.

78220. "Producer" means any person in this state who grows asparagus for market, including landlords who own a percentage of the crop, and who, upon request, provide proof of commodity sale. "Producer" does not include any person who has grown less than five acres of asparagus in the preceding marketing year.

78221. "Processing research" means any research relating to the processing of asparagus.

78222. "Advertising and promotion" means, in addition to its ordinarily accepted meaning, trade promotion and activities for the prevention, modification, or removal of trade barriers which affect the marketing of asparagus.

Article 3. The California Asparagus Commission

78225. (a) There is in the state government the California Asparagus Commission. The commission shall be composed of 13 members, as follows:

(1) Twelve producers, of which eight shall be from District 1 and four from District 2, each of whom shall be elected by and from producers within the respective districts.

(2) One member shall be a public member.

(b) The public member shall be appointed by the director from the nominees recommended by the commission.

(c) The director and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

78225.5. (a) Producers who are not subject to this chapter on the date it becomes operative pursuant to Article 5 (commencing with Section 78270) may petition the commission to establish an additional district that includes all of the counties which are not in District 1 or District 2. If the petition is approved by a two-thirds vote of the commission, the director shall conduct an implementation vote of the producers from those counties in accordance with Article 5 (commencing with Section 78270).

(b) If the director certifies a favorable vote, all producers from

those counties shall be subject to this chapter. Thereafter, in accordance with procedures established by the commission, the number of producers serving on the commission from each district shall be modified, if necessary, to ensure proper representation of each district. In no event, however, shall the commission be composed of more than 14 producers.

78226. (a) The director may require the commission to correct or cease any activity or function which is determined by the director not to be in the public interest or which is in violation of this chapter.

(b) If the commission refuses or fails to cease these activities or functions or to make corrections required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of the activities or functions, as required by the director, has been accomplished by the commission.

(c) Any action of the commission in violation of the written notice is without legal force or effect. The director, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions which are the subject of the written notice.

(d) At the same time the written notice is provided to the commission, the director shall notify the commission in writing of the specific acts which the director determines are not in the public interest or are in violation of this chapter, the director's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the director's recommendations with respect to any action that will make the activities or functions acceptable.

78227. The commission or the director may bring an action for judicial relief from the director's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other appropriate relief.

78228. When the director is required to concur in a decision of the commission, the director shall concur, refuse to concur, or request additional information from the commission within 15 working days from the date the director receives notification of the decision.

78229. The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the director acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the director's legal costs with regard to that action.

78230. Except for the ex officio members of the commission, an alternate member for each producer member shall be elected, and for the public member shall be appointed, in the same manner and

for the same term as the member. Except as provided in Section 78237, an alternate member shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall exercise all of the rights, privileges, and powers of the member when serving on the commission. If the status of a member changes, thereby making the member ineligible to serve, or in the event of the death, removal, resignation, or disqualification of a member, the alternate member shall act as a member of the commission until a qualified successor is elected or appointed.

78231. Any vacancy on the commission occurring by the failure of any person elected to or serving on the commission as a producer member or alternate member to continue in his or her position due to a change in his or her status, thereby making the person ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy.

78232. Any vacancy on the commission occurring by the failure of the public member or his or her alternate member to continue in his or her position due to a change in his or her status, thereby making the member or alternate ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by the director from nominees recommended by the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy.

78233. Any producer member and his or her alternate member on the commission shall be an individual producer or an employee representing a producer who has a financial interest in producing, or causing to be produced, asparagus for market. Qualifications of producer members and their alternate members shall be maintained during their entire term of office.

78234. The public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate member, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the asparagus industry.

78235. The term of office of all members and alternate members of the commission, except ex officio members, is three years commencing with the first day of December prior to the beginning of the marketing year in the year of their election and until qualified successors are elected. The terms of office of each member and alternate member of the commission shall be limited to three consecutive terms.

78236. The commission is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a seal, and has all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be prima

facie evidence of the truth of all statements therein.

78237. A quorum of the commission is a majority of the voting members of the commission. Any alternate member to any producer member may serve in the absence of any other member if that member's alternate is also absent and if that action is necessary to establish a quorum. Except as provided in Sections 78214, 78231, and 78302, the vote of a majority of the members present at a meeting at which there is a quorum shall constitute the act of the commission.

78238. The director or his or her representatives shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

78239. Members and alternate members of the commission, and members of committees established by the commission, shall not receive any compensation, but notwithstanding Section 11564.5 of the Government Code, shall receive the per diem established by the commission, not to exceed one hundred dollars ($100) per day. Ex officio members who are state officers or employees are not eligible for per diem pursuant to this section. In addition, members and alternate members of the commission, and members of committees established by the commission, shall be reimbursed for actual and necessary travel expenses under the rules of the Department of Personnel Administration. The per diem and reimbursement for travel expenses shall be paid to those members for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as approved by the commission.

78240. All funds received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks which the commission may designate and shall be disbursed by order of the commission through an agent or agents designated by the commission for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars ($25,000).

78241. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission.

No member, alternate member, employee, or agent of the commission is personally liable for the contracts of the commission nor is any such person responsible individually in any way to any producer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission.

Liability is several and not joint, and no member, alternate member, employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

Article 4. Powers and Duties of the Commission

78245. The powers and duties of the commission include, but are not limited to, all of those specified in this article.

78246. The commission may adopt, amend, and repeal regulations and operating procedures necessary to carry out this chapter, including regulations governing appeals from actions taken by the commission pursuant to any of its regulations or operating procedures.

78247. The commission may administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, the proper or advisable effectuation of this chapter.

78248. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

78249. The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter.

The commission may retain a management firm or the staff from any board, commission, or agency of the state or federal government to perform the functions prescribed by this section under the control of the commission. If any person employed by the commission 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 person.

78250. The commission may fix the compensation for all employees of the commission.

78251. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

78252. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, borrow funds in advance of receipt of assessments, and repay producers for costs incurred during the initial formation of the commission, 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.

78253. The commission shall keep accurate books, records, and accounts of all its dealings which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. A summary of the audit shall be reported to all producers, and a copy of the summary shall also be submitted to 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.

78254. The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters which affect this chapter, to the extent permitted by federal law.

78255. The commission may make, in its name, contracts to receive or render services in formulating and conducting plans and programs and any other contracts or agreements that the commission deems necessary for carrying out this chapter.

78256. The commission may conduct, and contract with others to conduct, any of the following:

(a) Programs for the development, maintenance, and expansion of foreign and domestic markets, including initiating and participating in trade and tariff related hearings and proceedings.

(b) Programs for promotion of asparagus sales, including marketing research and advertising and promotion.

(c) Programs for production and processing research

(d) Any other programs or actions in furtherance of the production and sale of asparagus.

78257. The commission may accept contributions or matching private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies, for purposes of this chapter.

78258. The commission may publish and distribute, without charge, bulletins and other communications for the dissemination of information to producers.

78259. The commission shall establish an assessment rate to defray the operating costs of the commission.

78260. The commission shall adopt an annual budget according to accepted accounting practices. The director shall concur in the adoption of the budget prior to the encumbrance of funds, except for encumbrances necessary to pay the compensation of employees of the commission.

78261. The commission shall annually prepare and submit to the director, for his or her concurrence, a statement of contemplated activities authorized pursuant to this chapter.

78262. The commission and the director shall keep confidential and shall not disclose, except when required in a judicial proceeding and except as otherwise provided in subdivision (c) of Section 78270, all lists of producers in their possession.

78263. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of

this chapter.

Article 5. Implementation and Voting Procedures

78270. (a) Within 30 days of the effective date of this chapter, the director shall establish a list of producers eligible to vote on the implementation of this chapter. In establishing the list, the director may require that handlers submit the names and mailing addresses of all known producers. The director also may require that the information provided include the quantity of asparagus produced by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote conducted pursuant to Section 78271. The request for the information shall be in writing, and the requested information shall be filed within 10 days following receipt of the request.

(b) Any producer whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the director a signed statement identifying himself or herself as a producer. The absence of a producer's name from the list does not exempt the producer from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact producers on the lists in a form and manner prescribed by the director if all expenses associated with the contacts are paid in advance.

78271. (a) This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the director finds, in a referendum vote conducted by the director, that at least 40 percent of the total number of producers from the list established by the director pursuant to this article have participated and that either of the following has occurred:

(1) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed 65 percent or more of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(b) The director shall use fresh weight in calculating the quantity of asparagus for purposes of the voting in subdivision (a).

78272. The director shall establish a period to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may be necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend the period to not more than 60 days.

78273. The failure of a producer to receive a ballot shall not

invalidate a referendum.

78274. If the director finds that a favorable vote has been given as provided in Section 78271, the director shall certify and give notice of the favorable vote to all producers whose names and addresses are on file with the director.

78275. If the director finds that a favorable vote has not been given as provided in Section 78271, the director shall certify and declare this chapter inoperative. The director may conduct another implementation referendum vote one or more years after the previous vote has been taken.

78276. Upon certification of the commission, the director shall contact all producers in each district by mail, or call meetings of producers in each district, for the purpose of nominating and electing persons to the commission. All producers on the director's list shall be given written notice of any election meetings at least 10 days prior to the meeting date. To be eligible for election to the commission, producer nominees shall present to the director a nomination petition with the signatures of at least three eligible producers from the district from which the nominee is seeking election.

78277. Subsequent to the first election of members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures which are adopted by the commission with the concurrence of the director.

78278. (a) Prior to the director holding the referendum pursuant to Section 78271, the proponents of the commission shall deposit with the director the amount that the director determines necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum.

(b) Any funds not used in carrying out Section 78271 shall be returned to the proponents of the commission who deposited the funds with the director.

(c) Upon the establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the director which were used in carrying out Section 78271 and for any legal expenses and other costs incurred in establishing the commission.

Article 6. Assessments and Records

78285. (a) The commission shall establish the assessment for the following marketing year not later than January 1 of each year, or as soon thereafter as possible. The commission shall adopt bylaws which establish the date for payment of the assessment.

(b) The assessment shall not exceed one cent ($0.01) per pound of all sales of asparagus by producers in the marketing year.

(c) The handler shall deduct the producer assessment from amounts paid by him or her to the producer and shall be a trustee

of these funds until they are paid to the commission at the time and in the manner prescribed by the commission.

(d) A fee greater than the amount specified in subdivision (b) shall not be charged unless approved by the vote specified in Section 78271.

78286. This chapter does not apply to any person who grows asparagus only for his or her own home use or who is not a producer. However, any such person who markets asparagus shall file an affidavit with the commission establishing that the person grows less than five acres of asparagus. The commission shall then determine whether the affidavit should be approved.

78287. Every handler shall keep a complete and accurate record of all asparagus handled with the name of the producer whose asparagus was handled. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the handler for two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

78288. (a) The commission may specify the conditions under which proprietary information obtained from producers may be disclosed. Otherwise, all proprietary information obtained by the commission or the director from producers is confidential and shall not be disclosed except when required in a judicial proceeding.

(b) Information on volume shipments, product value, and any other related information which is required for reports to governmental agencies; financial reports to the commission or aggregate sales and inventory information; and any other information which the commission requires that gives only totals, but excludes individual producer information, may be disclosed by the commission.

78289. Any assessment which is levied pursuant to this chapter is a personal debt of every producer so assessed.

78290. Every handler shall be personally liable for the payment of collected assessments to the commission. A failure by a handler to collect the assessment shall not exempt the handler from liability and shall not relieve any person subject to this chapter from the obligation to pay the assessment.

78291. Any producer or handler who fails to file a return or pay any assessment within the time required by the commission shall pay the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 1½ percent interest per month on the unpaid balance.

Article 7. Actions and Penalties

78295. It is a misdemeanor for any person to do any of the following:

(a) Refuse to render a report, statement, or record required by the commission.

(b) Furnish a false report, statement, or record required by the commission.

(c) When engaged in the handling of asparagus, to fail or refuse to furnish the commission, or its duly authorized agents, information concerning the names and addresses of persons from whom the asparagus have been received and the quantity so received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

78296. The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the director. The determination of the director shall be subject to judicial review upon petition filed with the appropriate superior court.

78297. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation of the commission, including, but not limited to, the nonpayment of assessments or the intentional submission of false information to the commission. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of that part, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business involving asparagus until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it may receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

78298. The suspension or termination of this chapter shall not affect or waive any right, duty, obligation, or liability which has arisen or which may thereafter arise in connection with this chapter,

release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Continuation or Suspension and Termination

78300. From January 1, 1995, to December 30, 1995, inclusive, the commission shall conduct a referendum among the producers to determine whether the operations of this chapter shall be approved and continued in effect. There is a favorable vote under this chapter if the director determines from the referendum that a majority of the eligible producers voting in the referendum voted in favor of continuing the operations of this chapter. If the director finds that a favorable vote has been given, the director shall so certify and this chapter shall remain effective. If the director finds that a favorable vote has not been given, the director shall so certify and declare the operations of this chapter suspended on December 31, 1995. Thereupon, operation of the commission shall be concluded and funds distributed in the manner provided in Section 78304 No bond or security shall be required for any such referendum.

78301. Following a favorable referendum conducted prior to December 31, 1995, the commission shall conduct a referendum every fifth year thereafter, unless a referendum is conducted as the result of a petition filed pursuant to this article. In that case, the referendum shall be held pursuant to procedures provided in Section 78300 every fifth year following the industry petitioned referendum.

78302. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the director that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The director shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the director requesting a suspension signed by not less than 20 percent of the producers by number who produced not less than 20 percent of the volume of asparagus in the immediately preceding marketing year, hold a referendum among the producers to determine if the operations of the commission shall be suspended. However, the director shall not hold a referendum as a result of the petition unless the petitioner shows, by a preponderance of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The director shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period. The director shall suspend the operation of this chapter if the

director finds that at least 40 percent of the total number of producers from the list established by the director have participated in the referendum and either one of the following has occurred:

(1) Sixty-five precent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed a majority of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

78303. (a) The director shall terminate the commission at the end of the then current marketing year if the director finds that the termination of the commission is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that produce at least 51 percent of the total quantity of asparagus.

(b) The person or persons originating the request shall file a written notice with the director in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the director.

(c) The signatures to the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition shall specify his or her place of business in a manner that will enable the location to be readily ascertained.

(d) The petition shall bear a copy of the notice of intention to terminate the commission. Signatures shall be secured within the time limit specified in this section.

78304. After the effective date of suspension, the operation of the commission shall be concluded and any and all funds remaining held by the commission and not required to defray the expenses of concluding and terminating operations of the commission shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate program conducted by the University of California or the California State University, another state agency, or a federal agency which deals with the purposes of this chapter. If no such program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

78305. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all producers whose names and addresses are on file with the commission and to the appropriate policy committees in both the

Assembly and Senate.

SEC. 2. 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. 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.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the survival of the state's asparagus industry against intense foreign competition, it is necessary that this act take effect immediately.

CHAPTER 1059

An act to amend Section 14998.8 of, and to repeal Sections 14998.11, 14998.12, and 14998.13 of, the Government Code, relating to the California Film Commission.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 14998.8 of the Government Code is amended to read:

14998.8. (a) The director shall be the permitting authority for the use of state-owned property and state employee services for the purpose of making commercial motion pictures. The commission may establish fees not to exceed the actual cost of the affected state agency for this purpose. All fees collected pursuant to this section shall be deposited in the Film Transfer Account, which is hereby created in the Special Deposit Fund, for disbursement by the director to reimburse the operating departments for their actual costs.

(b) The director shall assure a "one-stop" permit process for applications for permission to use state-owned property for motion

pictures. In so doing, applications for permission to use state property for making motion pictures shall be made to the director of the commission who, promptly upon receipt of such an application, shall contact the state agency having jurisdiction over the property specified in the application for the concurrence of the agency in the use of property. The denial of an application may be made on the basis of any of the following:

(1) The use would unduly interfere with the conduct of state business.

(2) Failure of the permittee to provide full insurance or bond coverage, if required by the Department of General Services, or the affected agency, sufficient to reimburse the state for any user-caused damage to the property and to provide adequate personal liability insurance coverage.

The use of state property shall be denied, if it is determined that the use would violate or be in conflict with existing provisions of statute or regulation by the director of the department, agency, or commission responding to a permit request.

(c) Any state agency having management and control over state property, the use of which is sought by an application, shall permit the property to be used, unless otherwise denied by the provisions of this section.

(d) Nothing in this section requires a state agency to take any action not authorized by law or to make any decision in a manner or by a method not authorized by law or which is prohibited by law.

(e) If in connection with the use of roads, highways, and freeways, the assistance, control, or protection by California Highway Patrol officers is desired, applications to the director to utilize services of California Highway Patrol officers in the production of motion pictures shall be made directly to the Commissioner of the California Highway Patrol. The commissioner may approve the application if employees are available and the department is fully reimbursed for additional costs incurred. Applications to utilize California Highway Patrol employee services shall be approved or disapproved by the commissioner

(f) The director, whenever feasible, shall approve or deny any application within 24 hours. In the event that the director of the department or agency having jurisdiction over the property specified in the application permit takes no action to disapprove the application within five working days, the application shall be deemed approved by the director. If the director of the department or agency determines that he or she is unable to concur or deny an application within five working days and so notifies the director within five working days of the application, the director shall then have a total of 10 days from receipt of the application to deny the application. In the event no action is taken by the director within the 10-day period, the application shall be deemed approved by the director.

(g) At least 30 days prior to adoption of state regulations, rules,

written guidelines, or policies that would have clear, explicit, and definite implications for the production of motion pictures on state-owned property by a state agency, including any of that agency's district or regional offices, other than for immediate health and safety purposes, the agency shall submit a written copy to the director. The commission shall review the proposal and report its findings to the submitting agency within five working days of receipt of the materials sent. The submitting agency shall consider the commission's findings prior to final adoption of the regulations, rules, written guidelines, or policies, unless the commission's findings are not made available to the submitting agency within the above prescribed time limits. Any and all findings made by the commission pursuant to this section shall be advisory. The submitting agency shall provide the commission with a final written copy of its adopted regulations, rules, written guidelines, or policies.

SEC. 2. Section 14998.11 of the Government Code is repealed.

SEC. 3. Section 14998.12 of the Government Code is repealed.

SEC. 4. Section 14998.13 of the Government Code is repealed.

CHAPTER 1060

An act to amend Sections 12705, 12710, 12711, 12713, 12714, 12715, 12718, 12720, 12725, 12726, 12727, 12728, 12733, 12736, 12737, 12739, and 12739.2 of, to amend the headings of Part 6.5 (commencing with Section 12700) of Division 2 of, and of Chapter 4 (commencing with Section 12715), and Chapter 8 (commencing with Section 12739) of Part 6.5 of Division 2 of, and to add and repeal Section 12712.5 of, the Insurance Code, relating to insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. The heading of Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code is amended to read:

PART 6.5. CALIFORNIA MAJOR RISK MEDICAL INSURANCE PROGRAM

SEC. 2. Section 12705 of the Insurance Code is amended to read:

12705. For the purposes of this part, the following terms have the following meanings:

(a) "Applicant" means an individual who applies for major risk medical coverage through the program.

(b) "Board" means the Major Risk Medical Insurance Board.

(c) "Fund" means the Major Risk 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 risk 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 risk 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 Risk Medical Insurance Program.

(h) "Subscriber" means an individual who is eligible for and receives major risk medical coverage through the program.

(i) "Subscriber contribution" means the portion of participating health plan rates paid by the subscriber.

SEC. 3. Section 12710 of the Insurance Code is amended to read:

12710. The California Major Risk Medical Insurance Program is hereby created in the Business, Transportation and Housing Agency. The program shall be managed by the Major Risk Medical Insurance Board. The board shall consist of six members, five of whom shall be 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.

The Secretary of Business, Transportation, and Housing, or his or her designee, shall serve on the board as an ex officio, nonvoting member.

The board shall appoint an executive director for the board, who shall serve at the pleasure of the board. The executive director shall receive the salary established by the Department of Personnel Administration for exempt officials. The executive director shall administer the affairs of the board as directed by the board, and shall

direct the staff of the board. The executive director may appoint, with the approval of the board, staff necessary to carry out the provisions of this part.

SEC. 4. Section 12711 of the Insurance Code is amended to read:

12711. The board shall have the authority:

(a) To determine the eligibility of applicants.

(b) To determine the major risk 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 subscriber contributions, and plan rates, and establish program contribution amounts.

(e) To provide major risk medical coverage for subscribers or to contract with a participating health plan or plans to provide or administer major risk 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.

SEC. 4.5. Section 12712.5 is added to the Insurance Code, to read:

12712.5. (a) Regulations adopted to implement this part shall be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(b) This section shall remain in effect until December 31, 1991, and as of that date is repealed, unless a later enacted statute, that is chaptered on or before December 31, 1991, deletes or extends that date.

SEC. 5. Section 12713 of the Insurance Code is amended to read:

12713. Plan rates for major risk 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.

SEC. 6. Section 12714 of the Insurance Code is amended to read:

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. The composition of the panel shall reflect the types of delivery systems providing services in this state. This consultation shall be nonbinding. The term of office of each member of this panel shall be for three years.

SEC. 7. The heading of Chapter 4 (commencing with Section 12715) of Part 6.5 of Division 2 of the Insurance Code is amended to read:

CHAPTER 4. POLICIES ISSUED BY THE BOARD

SEC. 8. Section 12715 of the Insurance Code is amended to read:

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 risk 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.

SEC. 9. Section 12718 of the Insurance Code is amended to read:

12718. Benefits under this chapter or Chapter 5 (commencing with Section 12720) shall be subject to required subscriber copayments and deductibles as the board may authorize. Any authorized copayments shall not exceed 20 percent and any authorized deductible shall not exceed an annual household deductible amount of five hundred dollars ($500). If the board contracts with participating health plans pursuant to Chapter 5 (commencing with Section 12720), copayments or deductibles shall be authorized in a manner consistent with the basic method of operation of the participating health plans. 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.

SEC. 10. Section 12720 of the Insurance Code is amended to read:

12720. The board 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 risk medical coverage to individuals and their dependents who apply for coverage through the program.

SEC. 11. Section 12725 of the Insurance Code is amended to read:

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 risk 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. The board may permit dependents of eligible subscribers to enroll in major risk medical coverage through the program if the board determines the enrollment can be carried out in an actuarially and administratively sound manner.

SEC. 12. Section 12726 of the Insurance Code is amended to read:

12726. The board may permit the exclusion of coverage or benefits for charges or expenses incurred by a subscriber during the first six months of enrollment in the program for any condition 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. The board may establish alternative mechanisms applicable to enrollment in health plans described in subdivision (c) or (d) of Section 12723. These mechanisms may include, but are not limited to, a postenrollment waiting period.

SEC. 13. Section 12727 of the Insurance Code is amended to read:

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 risk medical coverage, a list of contracting health plans and providers, and a summary of grievance procedures.

SEC. 14. Section 12728 of the Insurance Code is amended to read:

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 risk medical coverage for the subscriber and any dependents.

SEC. 15. Section 12733 of the Insurance Code is amended to read:

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 risk medical coverage afforded by this part.

SEC. 16. Section 12736 of the Insurance Code is amended to read:

12736. Each health plan contracting with the board pursuant to Chapter 5 (commencing with Section 12720) shall submit annually to the program rates which it estimates are sufficient to cover the cost of providing major risk medical coverage to its subscribers. The rates shall be submitted on the basis of categories of risk which shall be established by the board.

SEC. 17. Section 12737 of the Insurance Code is amended to read:

12737. The board 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 an average subscriber contribution 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 Risk Medical Insurance Fund.

SEC. 18. The heading of Chapter 8 (commencing with Section 12739) of Part 6.5 of Division 2 of the Insurance Code is amended to read:

CHAPTER 8. MAJOR RISK MEDICAL INSURANCE FUND

SEC. 19. Section 12739 of the Insurance Code is amended to read:

12739. There is hereby created in the State Treasury a special fund known as the Major Risk 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.

After June 30, 1991, thirty million dollars ($30,000,000) shall be deposited annually in the Major Risk Medical Insurance Fund from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund.

SEC. 20. Section 12739.2 of the Insurance Code is amended to read:

12739.2. From money appropriated by the Legislature to the fund, the board may expend sufficient funds for operating expenses incurred in carrying out the provisions of this part.

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 Risk Medical Insurance Program.

SEC. 21. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit the Major Risk Medical Insurance Program, which is necessary for the provision of health coverage to persons in need of that coverage, to take effect at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 1061

An act to amend Section 699.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 699.5 of the Insurance Code is amended to read:

699.5. (a) Except as provided by subdivision (b), a certificate of authority shall not issue to any insurer owned, operated, or controlled, directly or indirectly, by any other state, province, district, territory, or nation or any governmental subdivision or agency thereof.

(b) The ownership or financial control, in part, of any domestic, foreign, or alien insurer by any state of the United States or by a foreign government or by any political subdivision of either, or by an agency of any other state, government, or subdivision thereof, shall not restrict the commissioner from issuing, renewing, or continuing in effect the license of that insurer to transact in this state the kinds of insurance business for which that insurer is otherwise qualified under the provisions of this chapter and under its charter provided the insurer has satisfied the commissioner that (1) it is not subject to any form of subsidy that would enable it to compete unfairly with domestic insurers, (2) it is not subject to governmental practices that discriminate on the basis of race, color, creed, or national origin, (3) the ownership or financial control will not create the presence of any sovereign immunity in the insurer, (4) appropriate measures and controls exist to avoid security problems resulting from an insurer's access to confidential information and data of its insured, and (5) the ownership or financial control will not result in substantial or undue influence being asserted over the insurer.

(c) The amendment of this section made at the 1989 portion of the 1989–90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

CHAPTER 1062

An act to amend Section 11310 of, and to add Section 11313.5 to, the Business and Professions Code, relating to appraisers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. The Legislature finds and declares the following:

(1) The construction, sale, resale, and financing of real estate is an important segment of California's economy and must function smoothly and economically in order to meet the state's substantial and growing need for adequate housing.

(2) The Federal Office of Management and Budget, in its circular A-129 effective July 1, 1991, has directed federal entities to disassociate themselves from real estate loans not supported by an appraisal made by an appraiser licensed, registered, or certified at the state level.

The United States Congress has imposed a similar restriction upon federally regulated financial institutions pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73).

(3) Assembly Bill 527 of the 1989–90 Regular Session of the Legislature, will, if chaptered, provide a regulatory structure that complies with federal requirements, but may require more time to implement than is available after its effective date.

For these reasons, the Secretary of the Business, Transportation and Housing Agency is requested to take preliminary steps to implement the regulation of real estate appraisers to the extent permitted under law. Preliminary steps may include, but is not limited to, the drafting of requests for contract proposals, staff research, and the arrangement for physical facilities.

SEC. 2. Section 11310 of the Business and Professions Code, as added by Assembly Bill 527 of the 1989–90 Regular Session of the Legislature, is amended to read:

11310. The Governor shall appoint, subject to confirmation by the Senate, the Director of the Office of Real Estate Appraisers who shall, in consultation with the Governor and secretary, administer the licensing and certification program for real estate appraisers.

(a) The director shall serve at the pleasure of the Governor. The salary for the director shall be fixed and determined by the secretary with approval of the Department of Personnel Administration.

(b) The director shall not be actively engaged in the appraisal business or any other affected industry for the term of appointment and for one year thereafter.

(c) The director, in consultation with the secretary and in

accordance with the State Civil Service Act, may appoint and fix the compensation of legal, clerical, technical, investigation, and auditing personnel as may be necessary to carry out this part. All personnel shall perform their respective duties under the supervision and direction of the director.

(d) The director may appoint a deputy director of regulatory licensing activities and a deputy director of administration. The deputy directors shall perform their respective duties under the supervision and direction of the director.

(e) Every power granted to or duty imposed upon the director under this part may be exercised or performed in the name of the director by the deputy directors, subject to conditions and limitations as the director may prescribe.

SEC. 3. Section 11313.5 is added to the Business and Professions Code, to read:

11313.5. The Business, Transportation and Housing Agency, and, on and after January 1, 1991, the Director of the Office of Real Estate Appraisers shall adopt regulations to implement this part. Regulations adopted to implement this part that are adopted within one year of the effective date of this section may be adopted as emergency regulations, upon designation as such by the adopting authority, 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 purpose of the Administrative Procedure Act, the adoption of regulations designated as emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code, and the regulations shall not be subject to the review and approval of the Office of Administrative Law.

SEC. 4. Section 2 of this act shall become operative on the effective date of Assembly Bill 527.

Section 11313.5 of the Business and Professions Code, as added by Section 3 of this act, shall take effect and become operative immediately, and, upon the effective date of Assembly Bill 527, shall be included in Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, as added by that bill.

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 the most rapid possible implementation which complies with applicable federal guidelines, it is necessary that this act take effect immediately.

CHAPTER 1063

An act to amend Section 18138 of the Financial Code, relating to financial institutions.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 18138 of the Financial Code is amended to read:

18138. (a) No person may acquire in the aggregate 10 percent or more of the capital stock of, or the capital of, an industrial loan company through purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the written consent of the commissioner. Prior to any person acquiring 10 percent or more of the capital stock of, or the capital of, an industrial loan company, or prior to any person acquiring additional capital stock or capital of an industrial loan company which would result in an aggregate acquisition of 10 percent or more of the capital stock or of the capital, that person seeking the acquisition shall make written application to the commissioner requesting written consent for the acquisition.

(b) No person may acquire in the aggregate 10 percent or more of the capital stock or other securities that have voting power or control over the management of a holding company as defined in Section 18025 through purchase, foreclosure pursuant to a pledge or hypothecation, or otherwise without the written consent of the commissioner. Prior to any person acquiring 10 percent or more of the capital stock or other securities that have voting power or control over the management of a holding company as described herein, or prior to any person acquiring additional capital stock or other securities that have voting power or control over the management of a holding company as described herein which would result in an aggregate acquisition of 10 percent or more of the capital stock or other securities, or prior to any person acquiring 10 percent or more of the capital stock or other securities that have voting power or control over the management of a holding company as described herein, through the conversion of a security into another security or through the exercise of a right to purchase or subscribe to another security, that person seeking the acquisition shall make written application to the commissioner requesting written consent for the acquisition notwithstanding subdivision (e) of Section 25017 of the Corporations Code.

(c) With respect to the application required to be filed under subdivisions (a) and (b), the commissioner shall consent in writing or decline to consent within 60 days of the filing of a completed application.

CHAPTER 1064

An act relating to attorneys.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. (a) The Legislature authorizes and requests the State Bar of California to study the extent to which unlawful referrals, capping, and the unauthorized practice of law has undermined the delivery of legal services and the impact that any of those practices have had on the filing of frivolous or fraudulent lawsuits. The Legislature directs the State Bar of California to do the following:

(1) In conducting this study, to seek the participation of plaintiff and defense attorneys, claims personnel employed within the insurance industry, and representatives of the public agency fraud enforcement community.

(2) To deliver its findings and, if necessary, to make appropriate recommendations to the Legislature to amend existing statutes or enact new statutes to constrain those who engage in fraud and unlawful practice of the law.

(b) Findings and recommendations shall be submitted to the Legislature no later than December 31, 1992.

CHAPTER 1065

An act to amend Section 53069.85 of the Government Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Section 53069.85 of the Government Code is amended to read:

53069.85. The legislative body of a city, county, or district may include or cause to be included in contracts for public projects a provision establishing the time within which the whole or any specified portion of the work contemplated shall be completed. The legislative body may provide that for each day completion is delayed beyond the specified time, the contractor shall forfeit and pay to the agency involved a specified sum of money, which may be deducted from any payments due or to become due to the contractor. The sum

so specified is valid as liquidated damages unless manifestly unreasonable under the circumstances existing at the time the contract was made. A contract for such a project may also provide for the payment of extra compensation to the contractor, as a bonus for completion prior to the specified time. These provisions, if used, shall be included in the specifications upon which proposals or bids are received, which specifications shall clearly set forth the liquidated damages provisions.

For purposes of this section, "public project" shall include the erection, construction, alteration, repair, or improvement of any structure, building, road, railway, or other improvement, and the procurement of any other goods or services that are manufactured specifically, designed specifically, or produced specifically, pursuant to a contract with a public agency.

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

In order to clarify the application of Section 53069.85 to public projects, and to avoid confusion as to its interpretation, it is necessary for this act to take effect immediately.

CHAPTER 1066

An act to amend Sections 89071 and 90011 of, and to add Section 67311.5 to, the Education Code, and to amend Sections 1463.5a and 1463.7 of the Penal Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 19, 1990]

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

SECTION 1. Section 67311.5 is added to the Education Code, to read:

67311.5. (a) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt rules and regulations prescribing requirements similar to those provided by Section 22511.5 of the Vehicle Code and all other applicable sections of the Vehicle Code relating to parking exemptions for disabled persons, as defined by subdivision (a) of Section 22511.5 of, and subdivision (a) of Section 22511.9 of, the Vehicle Code, including authorization to park for unlimited periods in restricted parking zones and to park in any metered parking space without being required to pay any parking meter fee. The adopted regulations shall authorize parking at campus facilities and grounds

by students with disabilities and by persons providing transportation services to students with disabilities. Except as otherwise provided in this section, students with disabilities and persons providing transportation to students with disabilities shall be required to display a valid parking permit, if applicable, for the campus attended. Nothing in this section prohibits the adoption of rules and regulations providing greater accessibility for students with disabilities and persons providing transportation services to those students.

The adopted rules and regulations shall exempt students with disabilities and persons providing transportation services to these persons from any applicable parking restrictions in areas including, but not limited to, metered parking spaces and parking facilities designated for use by students, faculty, administrators, and employees.

(b) The Regents of the University of California may provide, and the Trustees of the California State University shall provide, and the Board of Governors of the California Community Colleges shall adopt rules and regulations requiring the governing board of each community college district to provide, visitor parking at each campus of the university or district at no charge for a disabled person, as defined by subdivision (a) of Section 22511.5 of, and subdivision (a) of Section 22511.9 of, the Vehicle Code, or as defined by each segment's policy concerning the provision of services to students with disabilities, whichever is more inclusive, and for persons providing transportation services to individuals with disabilities. Whenever parking designated for a disabled person is provided on any campus of the University of California, the California State University, or a community college district in a facility controlled by a mechanical gate, that university or district shall also provide accommodations for any person whose disability prevents him or her from operating the gate controls. These accommodations may be provided by making arrangements for disabled persons to be assisted in the operation of the gate controls, or through other effective and reasonable means the university or district may devise. Nothing in this subdivision shall be construed to require the replacement or elimination of special parking facilities restricted for the use of disabled persons located on the campuses of these universities or districts.

It is the intent of the Legislature that community college districts shall utilize the proceeds from parking fees charged to community college students and employees to offset costs incurred by these districts in accommodating disabled persons pursuant to the requirements of this section.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, establish procedures for the purpose of conducting biennial audits to determine whether individual campuses are in compliance with all state building code

requirements relating to the location and the designation of minimum percentages of available campus parking spaces for use by students with disabilities, as determined by guidelines of Section 14679 of the Government Code, Section 2-7102 of Title 24 of the California Code of Regulations, Part 40 (commencing with Section 40.1) of Title 24 of the Code of Federal Regulations, Section 1190.31 of Title 36 of the Code of Federal Regulations, or their successor provisions, or any other applicable provisions of law, whichever provides the greater accessibility for disabled persons.

The Trustees of the California State University shall, and the Regents of the University of California may, report the findings of these audits to the Legislature and the Governor.

(d) This section shall not apply to the University of California unless the Regents of the University of California, by resolution, make that provision applicable.

SEC. 2. Section 89701 of the Education Code is amended to read:

89701. The trustees are authorized to acquire, pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code) or by lease or other means, real property and to construct, operate, and maintain motor vehicle parking facilities thereon for state university officers, employees, students, or other persons. The trustees may prescribe the terms and conditions of the parking, and of parking on facilities existing on the effective date of this section, including the payment of parking fees in the amounts and under the circumstances determined by the trustees. Varying rates of parking fees may be established for different localities or for different parking facilities. In determining rates of parking fees, the trustees may consider the rates charged in the same locality by other public agencies and by private employers for employee parking, and the rates charged to students by other universities and colleges.

Except as otherwise provided in this section, revenues received by the trustees from any of the motor vehicle parking facilities, as well as from all parking facilities existing on the effective date of this section, shall be transmitted to the Treasurer and shall be deposited by that officer in the State Treasury to the credit of the State University Parking Revenue Fund, which fund is hereby created. The trustees may pledge all or any part of the revenues in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947 (Article 2 (commencing with Section 90010) of Chapter 8), in which case the revenues shall be deposited, transmitted, and used in the manner provided by that act. All revenues received by the trustees from parking facilities, to the extent not pledged in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947, are hereby appropriated, without regard to fiscal years, to the trustees for the acquisition, construction, operation, and maintenance of motor vehicle parking facilities on real property acquired hereunder or on real property otherwise under the jurisdiction of the trustees,

and for the study, development, enhancement, operation, and maintenance of alternate methods of transportation for state university officers, students, and employees of the California State University. The trustees shall allocate the funds for the construction of parking facilities for each of the California State University campuses only after programs incorporating alternate methods of transportation have been thoroughly investigated and considered, as determined by the alternative transportation committees of each campus and the trustees, in consultation with students and local government officials. Moneys in the State University Parking Revenue Fund may be invested by the Treasurer, upon approval of the trustees, in those eligible securities listed in Section 16430 of the Government Code. All interest or other earnings received pursuant to the investments shall be collected by the Treasurer, and shall be deposited in the Treasury to the credit of the State University Parking Revenue Fund.

The Legislature by this section does not intend to authorize the institution of a private parking program unrelated to state purposes in competition with private industry.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 90011 of the Education Code is amended to read:

90011. The following terms wherever used or referred to in this article, or in any indenture entered into pursuant hereto, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Board" means the Trustees of the California State University.

(b) "State University" and "campus of the California State University" each means any of the institutions included within the California State University as specified in Section 89001.

(c) "Project" means any one or more dormitories or other housing facilities, boarding facilities, student union or activity facilities, vehicle parking facilities, alternative transportation programs, or any other auxiliary or supplementary facilities for individual or group accommodation, owned or operated or authorized to be acquired, constructed, furnished, equipped, and operated by the board for use by students, faculty members, or other employees of any one or more campuses of the California State University, or a combination of those facilities, which may include facilities already completed and facilities authorized for future completion, designated by the board as a project in providing for the issuance of revenue bonds or notes.

(d) "Bonds" or "revenue bonds" mean the written evidence of any obligation, other than revenue bond anticipation notes, issued by

the board, payment of which is secured by a pledge of revenues or any part of revenues, as provided in this article, in order to obtain funds with which to carry out the purposes of this article, irrespective of the form of the obligations.

(e) "Notes" and "revenue bond anticipation notes" mean the written evidence of any obligation issued by the board, pursuant to Section 90013, in anticipation of the sale of revenue bonds, for the purpose of obtaining funds to carry out the purposes of this article.

(f) "Revenues" mean and include any and all fees, rates, rentals, and other charges received or receivable in connection with, and any and all other incomes and receipts of whatever kind and character derived by, the board from the operation of, or arising from, a project, including any revenue that may have been, or may be, impounded or deposited in any fund in the State Treasury created by this article for the security of any notes or bonds issued hereunder, or for the purpose of providing for the payment thereof, or the interest thereon.

(g) The "holder of bonds" or "bondholder" or any similar terms means any person who shall be the bearer of any outstanding revenue bond or bond registered to bearer or not registered or the registered owner of any outstanding revenue bond or bond which shall at the time be registered other than to bearer.

(h) "Indenture" means an agreement entered into by the board pursuant to which revenue bonds are issued, regardless of whether the agreement is expressed in the form of a resolution of the board or by other instrument.

(i) "Person" includes any individual, firm, corporation, association, copartnership, trust, business trust or receiver or trustee or conservator for any thereof, but does not include this state or any public corporation, political subdivision, city, county, district, or any agency thereof or of this state.

(j) (1) The present tense includes the past and future tenses; and the future, the present.

(2) The masculine gender includes the feminine and neuter.

(3) The singular number includes the plural, and the plural the singular.

(4) "Shall" is mandatory and "may" is permissive.

SEC. 4. Section 1463.5a of the Penal Code is amended to read:

1463.5a. (a) Notwithstanding any other provision of law, a municipal or justice court shall either authorize the California State University or any campus thereof to receive, deposit, accept forfeiture, and otherwise process the posting of bail for parking violations for which the California State University has issued a written notice of parking violation pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code within the judicial district, or the court shall receive, deposit, accept forfeiture, and otherwise process the posting of bail for parking violations.

(b) Notwithstanding subdivision (a) of Section 1463, out of the

moneys deposited with the county treasurer pursuant to Section 1463, there shall be transferred, once a month, to the State Treasury to the credit of the State University Parking Revenue Fund an amount equal to 50 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested or notified by a member of the state university police and charged with a violation of parking regulations adopted by or with the sanction of the Trustees of the California State University pursuant to subdivision (a) of Section 21113 of the Vehicle Code which are applicable to parking upon property under the possession or control of the trustees, and an amount equal to the remaining 50 percent shall be transferred to the general fund of the county. Moneys transferred to the State University Parking Revenue Fund, pursuant to this section, shall be used exclusively for the development, enhancement, and operation of alternative methods of transportation.

(c) If the moneys are deposited directly with the California State University or any campus thereof and forfeited pursuant to subdivision (a), all those moneys shall be transferred, once a month, to the State Treasury to the credit of the State University Parking Revenue Fund.

SEC. 5. Section 1463.7 of the Penal Code is amended to read:

1463.7. Funds transferred to the Regents of the University of California pursuant to Section 1463.6 may not be utilized to purchase land or to construct any parking facility. These funds may be utilized for the maintenance of existing parking facilities or alternate methods of transportation of students and employees of the University of California.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. 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 1067

An act to amend Section 34074, as added by Chapter 6 of the 1989–90 First Extraordinary Session of, and to repeal Chapter 2 (commencing with Section 34070) of Part 1.6 of Division 24, as added by Chapter 5 of the 1989–90 First Extraordinary Session 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 18, 1990 Filed with Secretary of State September 19, 1990.]

I am deleting the $100,000 appropriation contained in Section 3 of Senate Bill No. 2343

This bill would allow funds from the Natural Disaster Emergency Shelter Program to be used for the installation of food preparation facilities in addition to the current permissible uses of those funds

The bill appropriately clarifies activities which may be funded under the Natural Disaster Emergency Shelter Program. However, the General Fund appropriation for Santa Cruz County to fund the Motel Voucher Program, is not warranted.

I understand that the voucher program has sufficient resources to operate through October 1990 and it is unknown whether the need for services will continue after that date In addition, it is possible that some of the other service providers who receive funds under the Natural Disaster Emergency Shelter Program will not be using all of their allocation and will return these funds to the Department. At that time, the Community Action Board or the County may apply for additional funds, if appropriate Further, the Director of Finance is already authorized to transfer monies to the various disaster assistance programs from the General Fund Reserve should it be determined that a need to do so exists Therefore the appropriation contained in the bill appears unnecessary.

With this deletion, I approve Senate Bill No. 2343

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 34074 of the Health and Safety Code is amended to read:

34074. (a) Funds awarded, as a result of a natural disaster, may be used for any of the following:

(1) Rent vouchers which may be used within or outside the jurisdiction for which they were issued.

(2) Temporary expansion of existing shelters.

(3) Creation of temporary shelters, equipment of buildings and sites for use as emergency shelters; and the installation of food preparation and serving facilities, if the department determines that contracting for the provision of meals to the shelter residents, as defined in division (b), is not reasonable and economically feasible.

(4) Operation of shelters.

(5) Administration of emergency shelter programs.

(b) Any eligible recipient awarded funding as a result of a natural disaster shall be required to use the funds to provide emergency shelter to persons who have been rendered homeless as a result of the natural disaster. Recipients shall practice nondiscrimination in the provision of the shelter and shall use the funds to supplement, not

supplant, other federal, 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 the Natural Disaster Emergency Shelter Program.

SEC. 2. Chapter 2 (commencing with Section 34070) of Part 1.6 of Division 24 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 3. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the County of Santa Cruz for purposes of funding the Motel Voucher Program, as administered within the county, with the assistance of the nonprofit Community Action Board to be expended only if there are still clients, to be served by the program after October 31, 1990.

SEC. 4. Due to unique facts and circumstances applicable to Santa Cruz 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. Special legislation is, therefore, necessary and applicable to only Santa Cruz County.

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 expand shelter support facilities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1068

An act to add and repeal Part 4.75 (commencing with Section 12260) of Division 6 of the Water Code, relating to water resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

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

SECTION 1. Part 4.75 (commencing with Section 12260) is added to Division 6 of the Water Code, to read:

PART 4.75. SAN JOAQUIN RIVER MANAGEMENT PROGRAM

12260. The Legislature hereby finds and declares as follows:

(a) The San Joaquin River system has tremendous social, environmental, and economic value to the people of California for many consumptive and nonconsumptive beneficial purposes. The San Joaquin River system provides for flood protection, agricultural, municipal, and industrial uses, and for hydroelectric power, fish, wildlife, recreation, and navigation.

(b) Existing conditions on the San Joaquin River are less than satisfactory for many of the uses of the system, including water supply, water quality, flood protection, fisheries, wildlife habitat, and recreation.

(c) Too frequently independent, uncoordinated actions pit some beneficial uses of water against others, with a resultant loss in the river system's overall general health.

(d) Continuation of the status quo will mean further deterioration in the river system, adversely impacting all users.

(e) A forum is needed where information can be developed and exchanged to provide for the orderly development and management of the water resources of the San Joaquin River system to accomplish compatible improvements of the system for flood protection, water supply, water quality, and recreation and for the protection, restoration, and enhancement of fish and wildlife.

12261. As used in this part:

(a) "Advisory council" means the San Joaquin River Management Program Advisory Council created pursuant to Section 12262.

(b) "Action team" means the San Joaquin River Management Program Action Team created pursuant to Section 12263.

(c) "Management program" means the San Joaquin River Management Program established pursuant to this part.

12262. The San Joaquin River Management Program Advisory Council is hereby created consisting of the following members:

(a) (1) The director or a designee of the director of each of the following departments: the Department of Fish and Game, the Department of Water Resources, the Department of Parks and Recreation, the Department of Boating and Waterways, the Department of Food and Agriculture, and the Department of Conservation, and (2) a designee of each of the following: the State Water Resources Control Board, the Wildlife Conservation Board, the Reclamation Board, the Central Valley Regional Water Quality Control Board, the California Water Commission, the State Lands Commission, the Senate Natural Resources and Wildlife Committee, and the Assembly Water, Parks and Wildlife Committee.

(b) A designee of each of the following: the Director of the Mid-Pacific Region of the United States Bureau of Reclamation; the Sacramento District Engineer for the United States Army Corps of Engineers; the Regional Director, Region 1, for the United States Fish and Wildlife Service; the Regional Director, Region 3, for the National Marine Fisheries Service; the State Conservationist of the Soil Conservation Service; and the Regional Administrator, Region IX, for the Environmental Protection Agency.

(c) The following shall be members of the advisory council, unless the entity declines, and participate in the decisionmaking process or send a representative:

(1) The Counties of Calaveras, Kern, Kings, Fresno, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tulare, and Tuolumne.

(2) Cities located within those counties.

(3) Entities representing water user interests within those counties, including water, flood control, irrigation, reclamation, levee maintenance, and other resource management districts, including the Stockton Port District.

(4) Environmental, fisheries, and wildlife groups, including the California Natural Resources Federation, California Waterfowl Association, Central Valley Safe Environment Network, Natural Resources Defense Council, Pacific Coast Federation of Fishermen's Association, United Anglers, San Joaquin River Parkway and Conservation Trust, Environmental Defense Fund, San Joaquin Raptor Society, American Fisheries Society, Trout Unlimited, National Audubon Society, Sierra Club, Planning and Conservation League, the Friends of the River, and Cal Trout.

12263. The advisory council shall appoint members to serve on the San Joaquin River Management Program Action Team. No person shall serve on both the advisory council and the action team.

12264. The advisory council and the action team shall each select a chairperson from its members.

12265. Members of the advisory council and the action team shall serve without compensation.

12266. The advisory council shall develop the San Joaquin River Management Program. The management program shall identify actions which can be taken regarding the San Joaquin River to benefit legitimate uses of the system. The management program objective shall be to develop compatible solutions to water supply, water quality, flood protection, fisheries, wildlife habitat, and recreation needs. If the advisory council finds it desirable, the management program may be divided into appropriate subparts or components, based upon the ability to develop needed information and to identify appropriate solutions. In developing the management program, the advisory council shall accomplish the following:

(a) Identify ongoing studies concerning the San Joaquin River, including the United States Bureau of Reclamation, San Joaquin River Basin Resource Management Initiative and the United States Corps of Engineers studies in the San Joaquin River basin.

(b) Identify and describe issues and problems.

(c) Prepare a program scope, consistent with the stated purpose of the management program.

(d) Establish a series of priority actions with specified time frames, estimated costs and benefits, and proposed funding sources.

(e) Propose local, state, and federal actions.

12267. The area of study of the management program shall be the San Joaquin River from Friant Dam downstream through the South Delta Water Agency, including the following:

(a) The North Fork of the Kings River from the southerly boundary of the James Reclamation District Number 1606 to Mendota Dam.

(b) All other tributaries of the San Joaquin River up to the first major dam on each tributary.

Suggested solutions to the problems in the study area may include actions outside of the area.

12268. The action team shall serve as a working group to develop proposed program elements. The action team shall submit its recommendations to the advisory council for its review and approval. The advisory council shall be responsible for the management program.

12269. The Secretary of the Resources Agency shall appoint, with the consent of the advisory council, a project manager to coordinate activities of the advisory council and the action team.

12270. All meetings of the advisory council and the action team shall be open to the public. The advisory council and the action team shall hold at least one workshop each year in a county within the area of study.

12271. The advisory council shall submit annual reports on the management program, including proposed components for implementation, to the Legislature not later than October 1 of each year.

12272. This part shall not delay or preclude any current, pending, planned, or proposed fisheries and wildlife protection, enhancement, restoration, or acquisition activities or bank protection, flood control, irrigation, or other management activities along the San Joaquin River, nor shall it prevent the advisory council from taking action on any item pending completion of a final report.

12273. This part 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, repeals or extends that date.

SEC. 2. It is the intent of the Legislature that appropriate state agencies shall assign sufficient staff to carry out their responsibilities under this act.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent the further deterioration of the San Joaquin River system that could adversely impact all users at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1069

An act to amend Sections 1513, 1513.5, 1530, and 1532.1 of the Code of Civil Procedure, relating to unclaimed property and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 1513 of the Code of Civil Procedure, as amended by Chapter 450 of the Statutes of 1990, is amended to read:

1513. Subject to Sections 1510 and 1511, the following property held or owing by a business association escheats to this state:

(a) Except as provided in subdivision (f), any demand, savings, or matured time deposit, or account subject to a negotiable order of withdrawal, made with a banking organization, together with any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges which may lawfully be withheld and which do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

(2) Corresponded in writing with the banking organization concerning the deposit.

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

No banking organization may discontinue any interest or dividends on any savings deposit because of the inactivity contemplated by this section.

(b) Except as provided in subdivision (f), any demand, savings, or matured time deposit, or matured investment certificate, or account subject to a negotiable order of withdrawal, or other interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges which may lawfully be withheld and which do not (where made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or

dividends.

(2) Corresponded in writing with the financial organization concerning the funds or deposit.

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

No financial organization may discontinue any interest or dividends on any funds paid toward purchase of shares or other interest, or on any deposit, because of the inactivity contemplated by this section.

(c) Any sum payable on a travelers check issued by a business association that has been outstanding for more than 15 years from the date of its issuance, when the owner, for more than 15 years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association.

(d) Any sum payable on any other written instrument on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, any draft or certified check, that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, when the owner, for more than five years, has not corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

(e) Any sum payable on a money order issued by a business association (including a banking or financial organization), that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, when the owner, for more than seven years, has not corresponded in writing with the business association, banking, or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the business association.

(f) Any funds held by a business association in an individual retirement account or under a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state, when the owner, for more than three years after the funds become payable or distributable, has not done any of the following:

(1) Increased or decreased the principal.

(2) Accepted payment of principal or income.

(3) Corresponded in writing concerning the property or otherwise indicated an interest.

These funds are not payable or distributable within the meaning of this subdivision unless, under the terms of the account or plan, distribution of all or a part of the funds would then be mandatory.

(g) For purposes of this section "service charges" means service charges imposed because of the inactivity contemplated by this

section.

SEC. 2. Section 1513.5 of the Code of Civil Procedure, as amended by Chapter 450 of the Statutes of 1990, is amended to read:

1513.5. (a) Except as provided in subdivision (c), if the holder has in its records an address for the apparent owner, which the holder's records do not disclose to be inaccurate, every banking or financial organization shall make reasonable efforts to notify by mail any customer that the customer's deposit, account, shares, or other interest in the banking or financial organization will escheat to the state pursuant to subdivision (a) or (b) of Section 1513. Except as provided in subdivision (d), the notice shall be given not less than two years nor more than two and one-half years after the date of last activity by, or communication with, the owner with respect to the account, deposit, shares, or other interest, as shown on the record of the financial organization.

(b) The notice required by this section shall specify the time that the deposit, account, shares, or other interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the deposit, account, shares, or other interest. It shall also include a form, as prescribed by the Controller, by which the customer may declare an intention to maintain the deposit, account, shares, or other interest. If that form is filled out, signed by the customer, and returned to the banking or financial organization, it shall satisfy the requirement of paragraph (3) of subdivision (a) or paragraph (3) of subdivision (b) of Section 1513. The banking or financial organization may impose a service charge on the deposit, account, shares, or other interest for this notice in an amount not to exceed the administrative cost of mailing the notice and form and in no case to exceed two dollars ($2).

(c) Notice as provided by subdivisions (a) and (b) shall not be required for deposits, accounts, shares, or other interests of less than twenty-five dollars ($25) and no service charge may be made for notice on these items.

(d) In order that holders of funds or property escheated to the state pursuant to the changes in the law enacted by Chapter 450 of the Statutes of 1990, may comply with the notice requirements of this section, the two and one-half year period within which this notice is required to be provided shall be extended until February 1, 1991, if the notice period would otherwise expire prior to that date.

SEC. 3. Section 1530 of the Code of Civil Procedure is amended to read:

1530. (a) Every person holding funds or other property escheated to this state under this chapter shall report to the Controller as provided in this section.

(b) The report shall be on a form prescribed or approved by the Controller and shall include:

(1) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any

property of value of twenty-five dollars ($25) or more escheated under this chapter.

(2) In case of escheated funds of life insurance corporations, the full name of the insured or annuitant, and his last known address, according to the life insurance corporation's records;

(3) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of such property and the place where it is held and may be inspected by the Controller. The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained.

(4) The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25) each may be reported in aggregate.

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

(6) Other information which the Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) Except as provided in subdivision (f), the report shall be filed before November 1 of each year as of June 30 or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The Controller may postpone the reporting date upon his own motion or upon written request by any person required to file a report.

(e) The report, if made by an individual, shall be verified by the individual; if made by a partnership, by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(f) In order that holders of funds or property escheated to the state pursuant to the changes in the law enacted by Chapter 450 of the Statutes of 1990, may comply with the reporting requirements of this section, the time for filing reports otherwise required by subdivision (d) to be filed before November 1, 1990, shall be extended five months, and persons filing the report before April 1, 1991, shall be deemed to have provided a timely report under this section.

SEC. 4. Section 1532.1 of the Code of Civil Procedure, as added by Chapter 450 of the Statutes of 1990, is amended to read:

1532.1. Notwithstanding Sections 1531 and 1532, property escheating to the state pursuant to Section 1514 shall not be paid or delivered to the state until the earlier of (a) such time as the holder

is requested to do so by the Controller or (b) one year from the final date for filing the report required by Section 1530 as specified in subdivision (d) or (f) of Section 1530. Within 180 days from the final date for filing a report of the property as required by Section 1530, the Controller shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more. Within 180 days after receipt of property as provided by this section, the Controller shall cause a notice to be published as provided in Section 1531.

SEC. 5. For purposes of clarification only, the Legislature hereby declares that, by the enactment of Chapter 450 of the Statutes of 1990 and this act, the Legislature intends that all business associations holding property which on June 30, 1990, or thereafter is unclaimed for more than three years, as specified in the provisions of Chapter 450 of the Statutes of 1990 and as amended by this act, shall be reported and paid or delivered to the Controller in accordance with the applicable law as amended by Chapter 450 of the Statutes of 1990 and this act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the Controller may continue to administer the unclaimed property program in an efficient manner for the benefit of the residents of this state, it is necessary that this act take effect immediately.

CHAPTER 1070

An act to amend Sections 1188 and 1189 of, and to add Section 1190 to, the Civil Code, relating to notaries public.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 1188 of the Civil Code is amended to read:

1188. An officer taking the acknowledgment of an instrument shall endorse thereon or attach thereto a certificate substantially in the form prescribed in Section 1189.

SEC. 2. Section 1189 of the Civil Code, as added by Section 2 of Chapter 335 of the Statutes of 1990, is amended to read:

1189. (a) Any certificate of acknowledgment taken within this state shall be in substantially the following form:

State of California }
County of _____ }

On _____ before me, (here insert name and title of the officer), personally appeared _____

_____,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

(b) Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made.

(c) An acknowledgment provided prior to January 1, 1992, and conforming to applicable provisions of former Sections 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335 of the Statutes of 1990, shall have the same force and effect as if those sections had not be repealed.

SEC. 3. Section 1190 is added to the Civil Code, to read:

1190. The certificate of acknowledgment of an instrument executed on behalf of an incorporated or unincorporated entity by a duly authorized person in the form specified in Section 1189 shall be prima facie evidence that the instrument is the duly authorized act of the entity named in the instrument and shall be conclusive evidence thereof in favor of any good faith purchaser, lessee, or encumbrancer. "Duly authorized person," with respect to a domestic or foreign corporation, includes the president, vice president, secretary, and assistant secretary of the corporation.

CHAPTER 1071

An act to amend Section 1363 of the Health and Safety Code, and to add Section 10607 to the Insurance Code, relating to health insurance.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The commissioner shall require the use by each plan of disclosure forms or materials containing such information regarding the benefits, services, and terms of the plan contract as the commissioner may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The commissioner may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the commissioner from permitting such disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with such additional information as may be required by the commissioner, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability

which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of such choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(b) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the commissioner pursuant to this section for each plan so examined or sold.

(c) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(d) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time such persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all subscribers enrolled under the group contract.

(e) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract which may be less favorable to subscribers or enrollees.

(f) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

SEC. 2. Section 10607 is added to the Insurance Code, to read:

10607. In addition to the other disclosures required by this chapter, every insurer and their employees or agents shall, when presenting a plan for examination or sale to any individual or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of incurred claims to earned premiums (loss-ratio) for the insurer's preceding calendar year. This section shall become operative on March 1, 1991, in order to allow insurers time to comply with its provisions.

CHAPTER 1072

An act to amend Sections 3730, 3753.5, 3755, and 3756 of the Business and Professions Code, relating to respiratory care.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 3730 of the Business and Professions Code is amended to read:

3730. All certificates for the practice of respiratory care in this state shall be issued by the examining committee, and all applications for those certificates shall be filed with the examining committee. Except as otherwise required by the director pursuant to Section 164, the certificate issued by the examining committee shall describe the certificate holder as a "respiratory care practitioner certified by the Respiratory Care Examining Committee of the Medical Board of California."

Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a certificate without examination or to take an examination.

The application shall contain other information as the examining committee deems necessary to determine the qualifications of the applicant.

SEC. 2. Section 3753.5 of the Business and Professions Code is amended to read:

3753.5. (a) In any order issued in resolution of a disciplinary proceeding before the examining committee, the committee may request the administrative law judge to direct any practitioner found guilty of a charge involving a significant violation of Section 3750 or 3750.5, to pay to the committee a sum not to exceed the reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not be increased by the examining committee. If the examining committee does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase any assessed costs.

(c) Where an order for recovery of costs is made and timely payment is not made as directed in the examining committee's decision as approved by the board, the committee may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the committee may have as to any practitioner directed to pay costs.

(d) In any action for recovery of costs, proof of the committee's decision as approved by the board shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the committee shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the committee may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the committee to reimburse the committee within that one-year period for those unpaid costs.

SEC. 3. Section 3755 of the Business and Professions Code is amended to read:

3755. The committee may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The committee may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone certified as a respiratory care practitioner. Any person who engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than six hundred dollars ($600) or by imprisonment for a term not less than 60 days nor more than 180 days, or both the fine and imprisonment.

This section shall be operative until January 1, 1993, and on that date is repealed.

SEC. 4. Section 3756 of the Business and Professions Code is amended to read:

3756. (a) A respiratory care practitioner who provides respiratory care may be ordered to undergo a professional competency examination approved by the committee if, after investigation and review by one or more respiratory care practitioner consultants of the committee, there is reasonable cause to believe that the person providing respiratory care is unable or unwilling to practice respiratory care with reasonable skill and patient safety. Reasonable cause shall be determined by the committee and may include, but shall not be limited to, the following:

(1) A single incidence of gross negligence.

(2) A pattern of inappropriate direct or indirect administration of respiratory care protocols, procedures, therapeutic regimens, or diagnostic testing of monitoring techniques.

(3) An act of incompetence or negligence causing death or serious bodily injury.

(4) A pattern of substandard care.

(5) Violation of any provision of Section 3750 or 3755.

(b) The matter shall be presented by the committee's executive officer or designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the person who shall have 45 days after receipt of the copy of the petition to file written opposition to the petition. Service of the petition and any order shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The committee shall review the petition and any written opposition from the person who has charges brought against him or her, or the committee may hold a hearing in accordance with the provisions of the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The person who has charges brought against him or her shall have the right to be represented at that hearing by a person of his or her choice. If the committee is satisfied that reasonable cause exists that is considered by the committee as unprofessional conduct, the committee shall issue an order compelling the person who has charges brought against him or her to undergo an examination of professional competency, as measured by community standards. For purposes of this section, "community standards" means the statewide standards of the community of licensees. Failure to comply with the order duly served the person charged shall constitute unprofessional conduct for purposes of disciplinary proceedings and failure to pass the examination shall result in denial, suspension, or revocation of the certificate, license, or registration which shall be determined by the committee in its discretion.

(d) If the committee proceeds pursuant to the provisions of Sections 3755 and 3756 and the person charged passes the professional competency examination administered, the committee shall be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination.

(e) If the committee determines there is insufficient cause to file an accusation based on the examination results, then all agency records of the proceedings, including the petition and order for the examination, investigative reports, if any, reports of staff or the committee's consultants, and the reports of the examiners, shall be kept confidential and shall not be subject to discovery or subpoena.

(f) If no further proceedings are conducted to determine the person's fitness to practice during a period of five years from the date of the petition under Section 3756, then the agency shall purge and destroy all records pertaining to the proceeding.

This section shall be operative until January 1, 1993, and on that date is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 1073

An act to amend Section 26521 of the Government Code, and to amend Sections 1305 and 1306 of the Penal Code, relating to bail.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 26521 of the Government Code is amended to read:

26521. The district attorney shall defend all suits brought against the state in his or her county or against his or her county wherever brought, and prosecute all recognizances forfeited in the courts of record and, except as provided in Sections 1305 and 1306 of the Penal Code, prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his or her county.

SEC. 2. Section 1305 of the Penal Code is amended to read:

1305. (a) If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his or her presence in court is lawfully required, or to surrender himself or herself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, and, unless within 15 court days from arraignment no complaint has been filed or the charges have been dismissed, the undertaking of bail or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited, and, if the amount of the forfeiture exceeds three hundred dollars ($300), the clerk of the court shall promptly, upon entering the fact of the failure to appear in the minutes, mail notice of the forfeiture to the surety on the bond or depositor of money instead of bond, and shall execute a certificate of the mailing and place it in the court's file in the case. If the surety is an authorized corporate surety insurer, and if the bond has plainly printed or stamped thereon the address of its principal office, the notice shall be mailed to the surety at that address, and mailing to the bail agent or solicitor who posted the bond shall not constitute compliance with this section. The clerk shall, at the same time, send a copy of the notice to the bail agent or solicitor who posted the bond. If the clerk fails to mail the notice within 30 days after the entry, the surety or

depositor shall be released from all obligations under the bond.

But, if at any time within 180 days after the entry in the minutes or, if mailing of notice of forfeiture is required, within 180 days after mailing the notice of forfeiture, the defendant appears and satisfactorily excuses the defendant's neglect or shows to the satisfaction of the court that the absence of the defendant was not with the connivance of the bail, the court shall, under terms as may be just and that are equal with respect to all forms of pretrial release, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately. The court may order the bail reinstated and the defendant released again on the same bond after notice to the bail, provided that the bail has not surrendered the defendant. If, at any time within 180 days after the entry in the minutes or mailing, as the case may be, the bail should surrender the defendant to the court or to custody, the court shall, under terms as may be just, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately.

If, within 180 days after the entry in the minutes or mailing, as the case may be, it is made to appear to the satisfaction of the court that the defendant is dead or is otherwise permanently unable to appear in court due to illness, insanity, or detention by civil or military authorities, and that the absence of the defendant was not with the connivance of the bail, the court shall, under terms as may be just and that are equal with respect to all forms of pretrial release, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately. If, within 180 days after the entry in the minutes or mailing, as the case may be, it is made to appear to the satisfaction of the court that the defendant is temporarily disabled by reason of illness, insanity, or detention by civil or military authorities and is, therefore, unable to appear in court at any time during the remainder of the 180 days and that the absence of the defendant has not been with the connivance of the bail, then the period of time during which the disability continues shall not be deemed part of the 180 days. Upon a finding by the court that a reasonable period of time is necessary in order to return the defendant to court upon the termination of the disability, then the period of time, as fixed by the court, shall not be deemed part of the 180 days.

Unless waived by the district attorney, other prosecuting attorney, or county counsel, as the case may be, no order discharging the forfeiture of the undertaking or deposit shall be made without notice by the bail to the district attorney, prosecuting attorney, or county counsel, as specified by the board of supervisors after consultation with the county counsel and the district attorney, who may request a hearing within 10 days after receipt of the notice. The notice may be given by the surety insurer, its bail agent, the surety, or the depositor of money, any of whom may give the notice and appear either in person or by an attorney. The court shall then set the date,

time, and place of hearing and give notice to the district attorney, prosecuting attorney, and county counsel and to the bail. The district attorney, prosecuting attorney, or county counsel, as the case may be, shall recover the costs incurred in successfully opposing a motion to discharge the forfeiture of the undertaking or deposit prior to the division of the forfeited bail money between the cities and the county in accordance with Section 1463. The costs shall be recovered from the forfeited bail money.

(b) If, without sufficient excuse, the defendant neglects to appear for arraignment, trial, judgment, or upon any other occasion when his or her presence in court is lawfully required, or to surrender himself or herself in execution of the judgment, but the court has reason to believe that sufficient excuse may exist for his or her neglect to appear or surrender himself or herself, the court may continue the case for a period as it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant.

SEC. 3. Section 1306 of the Penal Code is amended to read:

1306. (a) When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture, regardless of the amount of the bail, shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. In no event shall the judgment exceed the amount of the bond, with costs, and notwithstanding any other provision of law, no penalty assessments shall be levied or added to the judgment.

(b) If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.

(c) A dismissal of the complaint, indictment or information after the default of the defendant shall not release or affect the obligation of the bail bond or undertaking.

(d) The district attorney or county counsel shall:

(1) Demand immediate payment of the judgment within 30 days after the summary judgment becomes final.

(2) If the judgment remains unpaid for a period of 20 days after demand has been made, shall forthwith enforce the judgment in the manner provided for enforcement of money judgments generally. If the judgment is appealed by the surety or bondsman, the undertaking required to be given in these cases shall be provided by a surety other than the one filing the appeal. The undertaking shall comply with the enforcement requirements of Section 917.1 of the Code of Civil Procedure.

(e) The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment.

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 1074

An act to amend Section 4035.4 of the Business and Professions Code, relating to medical device retailers.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 4035.4 of the Business and Professions Code is amended to read:

4035.4. No person other than a registered pharmacist, as defined in Section 4037, or an intern pharmacist, as defined in Section 4038.1, an exempt person, as specified in Section 4050.8, or an authorized officer of the law or a person authorized to prescribe, as provided in Section 4036, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4034.5 wherein dangerous devices as therein defined are stored, possessed, prepared, manufactured, or repacked, except that a registered pharmacist or exemptee shall be responsible for any individual who enters the medical device retailer as described in Section 4034.5 for the purposes of receiving fitting or consultation from the pharmacist or exemptee or any person performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the medical device retailer. The registered pharmacist or exemptee shall remain present in the medical device retailer any time an individual is present who is seeking a fitting or consultation. However, an exemptee need not be present on the premises of a medical device retailer at all times of operation and need not be present in a warehouse facility owned by a medical device retailer unless the board establishes that requirement by regulation based upon the need to protect the public. The exemptee need not be present if the dangerous devices are stored in a secure locked area, under the exclusive control of the exemptee, and unavailable for dispensing.

A "warehouse" as used in this section, is a facility owned by a medical device retailer which is used for storage only. There shall be no fitting, display or sales at the location. A pharmacist or exemptee shall be designated as "in charge" of a warehouse but need not be present during operation. The pharmacist or exemptee may permit others to possess a key to the warehouse.

The board may by regulation establish reasonable security measures consistent with this section in order to prevent unauthorized persons from gaining access to the area, place, or premises or to the dangerous devices therein.

The board may by regulation establish a list of those dangerous devices which may be maintained, dispensed, sold, or furnished only by a pharmacist in a pharmacy. In establishing or modifying that list, the board shall consider factors, including, but not limited to:

(a) The potential for abuse or spread of illness.

(b) The danger to the public if the device is not so restricted.

(c) The potential danger to minors if the device is not so restricted.

The board may, by regulation, establish labeling requirements for dangerous devices sold, fitted, or dispensed by a medical device retailer as it deems necessary for the protection of the public.

CHAPTER 1075

An act to amend Sections 87102.5, 87207, 87406, and 89513 of, and to add Sections 82030.5, 87102.8, 87306.5, and 89511.5 to, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 82030.5 is added to the Government Code, to read:

82030.5. (a) For purposes of this title, "earned income" means, except as provided in subdivision (b), income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered.

(b) Income which is not "earned income" includes, but is not limited to, the following:

(1) Any income derived from stocks, bonds, property, or other investments, or from retail or wholesale sales.

(2) Any amount paid by, or on behalf of, an elected state officer to a tax-qualified pension, profit sharing, or stock bonus plan and received by the elected state officer from the plan.

(3) The community property interest in the income of a spouse.

SEC. 2. Section 87102.5 of the Government Code is amended to

read:

87102.5. (a) The remedies provided in Chapter 3 (commencing with Section 83100) shall apply to any Member of the Legislature who makes, participates in making, or in any way attempts to use his or her official position to influence any of the following governmental decisions in which he or she knows or has reason to know that he or she has a financial interest:

(1) Any state governmental decision, other than any action or decision before the Legislature, made in the course of his or her duties as a member.

(2) Approval, modification, or cancellation of any contract to which either house or a committee of the Legislature is a party.

(3) Introduction as a lead author of any legislation that the member knows or has reason to know is nongeneral legislation.

(4) Any vote in a legislative committee or subcommittee on what the member knows or has reason to know is nongeneral legislation.

(5) Any rollcall vote on the Senate or Assembly floor on an item which the member knows is nongeneral legislation.

(6) Any action or decision before the Legislature in which all of the following occur:

(A) The member has received any salary, wages, commissions, or similar earned income within the preceding 12 months from a lobbyist employer.

(B) The member knows or has reason to know the action or decision will have a direct and significant financial impact on the lobbyist employer.

(C) The action or decision will not have an impact on the public generally or a significant segment of the public in a similar manner.

(7) Any action or decision before the Legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a significant segment of the public, from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

(b) For purposes of this section, all of the following apply:

(1) "Any action or decision before the Legislature" means any vote in a committee or subcommittee, or any rollcall vote on the floor of the Senate or Assembly.

(2) "Financial interest" means an interest as defined in Section 87103.

(3) "Legislation" means a bill, resolution, or constitutional amendment.

(4) "Nongeneral legislation" means legislation that is described in Section 87102.6 and is not of a general nature pursuant to Section 16 of Article IV of the Constitution.

(5) A Member of the Legislature has reason to know that an action or decision will have a direct and significant financial impact on a

person with respect to which disqualification may be required pursuant to subdivision (a) if either of the following apply:

(A) With the knowledge of the member, the person has attempted to influence the vote of the member with respect to the action or decision.

(B) Facts have been brought to the member's personal attention indicating that the action or decision will have a direct and significant impact on the person.

(6) The prohibitions specified in subdivision (a) do not apply to a vote on the Budget Bill as a whole, or to a vote on a consent calendar, a motion for reconsideration, a waiver of any legislative rule, or any purely procedural matter.

(7) A Member of the Legislature has reason to know that legislation is nongeneral legislation if facts have been brought to his or her personal attention indicating that it is nongeneral legislation.

(8) Written advice given to a Member of the Legislature regarding his or her duties under this section by the Legislative Counsel shall have the same effect as advice given by the commission pursuant to subdivision (b) of Section 83114 if both of the following apply:

(A) The member has made the same written request based on the same material facts to the commission for advice pursuant to Section 83114 as to his or her duties under this section, as the written request and facts presented to the Legislative Counsel.

(B) The commission has not provided written advice pursuant to the member's request prior to the time the member acts in good faith reliance on the advice of the Legislative Counsel.

SEC. 3. Section 87102.8 is added to the Government Code, to read:

87102.8. (a) No elected state officer, as defined in Section 14 of Article V of the California Constitution and including the Insurance Commissioner, shall make or participate in the making of, or use his or her official position to influence, any governmental decision before the agency in which the state elected officer serves, where he or she knows or has reason to know that he or she has a financial interest.

(b) An elected state officer knows or has reason to know that he or she has a financial interest in a decision before the agency in which he or she serves where all of the following occur:

(1) The officer has received any salary, wages, commissions, or similar earned income within the preceding 12 months from a lobbyist employer.

(2) The officer knows or has reason to know that the action or decision will have a direct and significant financial impact on the lobbyist employer specified in subparagraph (1).

(3) The officer knows or has reason to know that the action or decision before the agency in which the state elected officer serves will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a

significant segment of the public, from whom the officer has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

(c) The definitions of "public generally" and "significant segment of the public" contained in Section 87102.6 shall apply to this section.

(d) Notwithstanding Section 87102, the remedies provided in Chapter 3 (commencing with Section 83100) shall apply to violations of this section.

SEC. 4. Section 87207 of the Government Code is amended to read:

87207. (a) When income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and address of each source of income aggregating two hundred fifty dollars ($250) or more in value, or fifty dollars ($50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least two hundred fifty dollars ($250) but did not exceed one thousand dollars ($1,000), whether it was in excess of one thousand dollars ($1,000) but was not greater than ten thousand dollars ($10,000), or whether it was greater than ten thousand dollars ($10,000);

(3) A description of the consideration, if any, for which the income was received;

(4) In the case of a gift, the amount and the date on which the gift was received.

(5) In the case of a loan, the annual interest rate and the security, if any, given for the loan.

(b) When the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity;

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars ($10,000) during a calendar year.

(c) When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

SEC. 5. Section 87306.5 is added to the Government Code, to read:

87306.5. (a) No later than July 1 of each even-numbered year, the code reviewing body shall direct every local agency which has adopted a Conflict of Interest Code in accordance with this title to review its Conflict of Interest Code and, if a change in its code is necessitated by changed circumstances, submit an amended Conflict of Interest Code in accordance with subdivision (a) of Section 87302 and Section 87303 to the code reviewing body.

(b) Upon review of its code, if no change in the code is required, the local agency head shall submit a written statement to that effect to the code reviewing body no later than October 1 of the same year.

SEC. 6. Section 87406 of the Government Code is amended to read:

87406. (a) This section shall be known, and may be cited, as the Milton Marks Postgovernment Employment Restrictions Act of 1990.

(b) No Member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, any committee or subcommittee thereof, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

(c) No elected state officer, other than a Member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this subdivision, an appearance before a "state administrative agency" does not include an appearance in a court of law, before an administrative law judge, or before the Worker's Compensation Appeals Board.

(d) (1) No designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, and no member of a state administrative agency, for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before

leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Worker's Compensation Appeals Board. The prohibition of this paragraph shall only apply to designated employees employed by a state administrative agency on or after January 7, 1991.

(2) For purposes of paragraph (1), a state administrative agency of a designated employee of the Governor's office includes any state administrative agency subject to the direction and control of the Governor.

(e) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to any individual subject to this section who is or becomes an officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the state agency, board, or commission.

(f) This section shall become operative on January 1, 1991, but only if Senate Constitutional Amendment No. 32 of the 1989–90 Regular Session is approved by the voters. With respect to Members of the Legislature whose current term of office on January 1, 1991, began in December 1988, this section shall not apply until January 1, 1993.

SEC. 7. Section 89511.5 is added to the Government Code, to read:

89511.5. (a) An incumbent elected officer may utilize his or her personal funds for expenditures authorized by subdivision (b) of Section 89510 without first depositing those funds in his or her controlled committee's campaign bank account, if both of the following conditions are met:

(1) The expenditures are not campaign expenses.

(2) The treasurer of the committee is provided with a dated receipt and a written description of the expenditure.

(b) An incumbent elected officer may be reimbursed for expenditures of his or her personal funds, from either the controlled committee campaign bank account established pursuant to Section 85201 with respect to election to the incumbent term of office, or from a controlled committee campaign bank account established pursuant to Section 85201 with respect to election to a future term of office, if all of the following conditions are met:

(1) The expenditures are not campaign expenses.

(2) The incumbent elected officer, prior to reimbursement, provides the treasurer of the committee with a dated receipt and a written description of each expenditure.

(3) Reimbursement is paid within 90 days of the expenditure, in

the case of a cash expenditure, or within 90 days of the end of the billing period in which it was included, in the case of an expenditure charged to a credit card or charge account.

(c) When the elected officer's controlled committee is notified that expenditures totaling one hundred dollars ($100) or more in a fiscal year have been made by the incumbent elected officer, the committee shall report, pursuant to subdivision (j) of Section 84211, the expenditures on the campaign statement for the period in which the expenditures were made and the reimbursements on the campaign statement for the period in which the reimbursements were made.

(d) If reimbursement is not paid within the time authorized by this section, the expenditure shall be reported on the campaign statement as a nonmonetary contribution received on the 90th day after the expenditure is paid, in the case of a cash expenditure, or within 90 days of the end of the billing period in which it was included, in the case of an expenditure charged to a credit card or charge account.

(e) This section shall not be construed to authorize an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those expenses associated with his or her election to the specific office for which the account was established and expenses associated with holding that office.

SEC. 7. Section 89513 of the Government Code is amended to read:

89513. The following provisions govern the use of campaign funds for the specific expenditures set forth in this section. It is the intent of the Legislature that these provisions shall guide the interpretation of the standard imposed by Section 89512 as applied to other expenditures not specifically set forth below.

(a) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or employees or staff of the campaign committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose.

(1) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.

(2) For the purposes of this section, payments or reimbursement for travel by the household of a candidate or elected officer when traveling to the same destination in order to accompany the candidate or elected officer shall be considered for the same purpose as the candidate's or elected officer's travel.

(3) Whenever campaign funds are used to pay or reimburse a

candidate, elected officer, his or her representative, or a member of the candidate's household for travel expenses and necessary accommodations, the expenditure shall be reported as required by paragraph (7) of subdivision (j) of Section 84211.

(4) Whenever campaign funds are used to pay or reimburse a candidate, elected officer, his or her representative, or a member of the candidate's household for travel expenses and necessary accommodations, any mileage credit which is earned or awarded pursuant to an airline bonus mileage program shall be deemed personally earned by or awarded to the individual traveler. Neither the earning or awarding of mileage credit, nor the redeeming of credit for actual travel, shall be subject to reporting pursuant to Section 84211.

(b) Campaign funds shall not be used to pay for or reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose.

(1) Expenditures by a campaign committee to pay for professional services reasonably required by the campaign committee to assist it in the performance of its administrative functions are directly related to a political, legislative, or governmental purpose.

(2) Campaign funds shall not be used to pay health-related expenses for a candidate, elected officer, or members of his or her household. "Health-related expenses" include, but are not limited to, examinations by physicians, dentists, psychiatrists, psychologists, or counselors, expenses or medications, treatments or medical equipment, expenses for hospitalization, health club dues, and special dietary foods. However, campaign funds may be used to pay employer costs of health care benefits for a member of the candidate's or elected officer's household who is a bona fide employee of the campaign committee.

(c) Campaign funds shall not be used to pay or reimburse fines, penalties, judgments, or settlements, except those resulting from either of the following:

(1) Parking citations incurred in the performance of an activity which was directly related to a political, legislative, or governmental purpose.

(2) Any other action for which payment of attorney's fees from contributions would be permitted pursuant to this title.

(d) Campaign funds shall not be used for campaign, business, or casual clothing except specialty clothing that is not suitable for everyday use, including, but not limited to, formal wear, where this attire is to be worn by the candidate or elected officer and is directly related to a political, legislative, or governmental purpose.

(e) Except where otherwise prohibited by law, campaign funds may be used to purchase or reimburse for the costs of purchase of tickets to political fundraising events for the attendance of a candidate, elected officer, his or her immediate family, and employees or staff of the campaign committee and the elected

officer's governmental agency.

(1) Campaign funds shall not be used to pay for or reimburse for the costs of tickets for entertainment or sporting events for the candidate, elected officer, or members of his or her immediate family unless their attendance at the event is directly related to a political, legislative, or governmental purpose.

(2) The purchase of tickets for entertainment or sporting events for the benefit of persons other than the candidate, elected officer, or his or her immediate family are governed by subdivision (f).

(f) (1) Campaign funds shall not be used to make personal gifts unless the gift is directly related to a political, legislative, or governmental purpose. The refund of a campaign contribution does not constitute the making of a gift.

Nothing in this section shall prohibit the use of campaign funds to reimburse or otherwise compensate a public employee for services rendered to a candidate or campaign committee while on vacation, leave, or otherwise outside of compensated public time.

(2) An election victory celebration or similar campaign event, or gifts with a total cumulative value of less than two hundred fifty dollars ($250) in a single year made to an individual employee, a campaign committee worker, or an employee of the elected officer's agency, are considered to be directly related to a political, legislative, or governmental purpose. For purposes of this paragraph, a gift to a member of a person's immediate family shall be deemed to be a gift to that person.

(g) Campaign funds shall not be used to make loans other than to organizations pursuant to Section 89515, or, unless otherwise prohibited, to a candidate for elective office, political party, or committee.

SEC. 9. The Legislature finds and declares that this act furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 10. 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 of 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 1076

An act to amend Section 55882 of, and to add Chapter 13.5 (commencing with Section 75501) to Division 22 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 55882 of the Food and Agricultural Code is amended to read:

55882. It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments which have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Article 6 (commencing with Section 72101) of Chapter 10, Article 6 (commencing with Section 75131) of Chapter 13, Article 8 (commencing with Section 75631) of Chapter 13.5, or Article 6 (commencing with Section 76141) of Chapter 14 of Division 22.

SEC. 2. Chapter 13.5 (commencing with Section 75501) is added to Divison 22 of the Food and Agricultural Code, to read:

CHAPTER 13.5. CALIFORNIA APPLE COMMISSION

Article 1. Declaration and General Provisions

75501. The production and marketing of apples constitute an important industry of this state which provides substantial and necessary revenues for the state and employment for its residents.

75502. The maintenance of the apple industry of California is necessary to assure the public of a continuous supply of this vital food product and the maintenance of needed levels of income for those persons engaged in the industry.

75503. The production and marketing of apples produced in this state are hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general

welfare of the people of this state.

75504. No action taken by the commission, any varietal committee, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, or any statutory or common law against monopolies or combinations in restraint of trade.

75505. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the 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.

75506. It is hereby declared as a matter of legislative determination that members of the commission and members of varietal committees are intended to represent and further the interest of a particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes the public generally within the meaning of Section 87103 of the Government Code.

75507. A commission form of administration created by this chapter is designed to deal with the broad fields of advertising, promotion, marketing research, and production research of apples, and any other activity authorized in this chapter.

Article 2. Definitions

75511. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

75511.5. "Apple" means any variety of apple that is grown in this state and marketed for fresh consumption.

75512. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

75513. "Commission" means the California Apple Commission.

75514. "Director" means the Director of Food and Agriculture.

75515. "Ex officio member" means a nonvoting member of the commission.

75516. "Handler" means any person engaged in marketing apples for fresh consumption which the person has produced or which the person is marketing on behalf of a producer either directly or through an agent, employee, broker, or otherwise.

75517. "Industry member" means a member of the commission or a varietal committee who is engaged in marketing or packing apples for fresh consumption, or both, who is not engaged in the business of producing, or causing to be produced, apples for market.

75518. "Market" or "marketing" means to sell apples.

75519. "Marketing research" means any research relating to the sale of apples.

75520. "Marketing year" means the period established by each varietal committee.

75521. "Pack," "packing," or "packed" means the regular compact arrangement of all or part of the fruit in any container or subcontainer.

75522. "Person" means any individual, firm, corporation, association, or other entity doing business in California.

75523. "Producer" means any person who is engaged in the business of producing, or causing to be produced, apples for market within this state, and who, upon request of the commission, provides proof of commodity sale.

75524. "Production research" means any research related to the production harvest, and postharvest handling of apples, other than marketing research.

75525. "Sale" means the point at which the producer transfers title of apples in exchange for financial compensation or other valuable consideration. A sale may occur even though the purchased apples are not placed in normal marketing channels.

75526. "Varietal committee" means a body of producers and other persons engaged in producing or handling a specific variety of apples who are elected or appointed to serve that segment of the apple industry.

Article 3. The California Apple Commission

75531. (a) There is in the state government the California Apple Commission. Until such time as there is more than one varietal committee established pursuant to this chapter, the Granny Smith Apple Varietal Committee, which is considered as one varietal committee, shall have all of the powers, duties, and functions provided the commission pursuant to this chapter.

(b) The commission shall consist of not less than eight and not more than 15 producer members, not more than four industry members, and one public member.

(c) Membership on the commission of producers of various varieties of apples shall be determined by the proportion each variety of apple bears to the total quantity of apples subject to this chapter during the marketing year immediately preceding the year in which this chapter is implemented, as determined by the director, and shall be recalculated every three years. The commission shall determine the total number of producer members to serve on the commission. Each varietal committee shall select from among its

members the producers to serve on the commission. The commission shall adopt procedures which specify the manner in which the membership on the commission shall be modified, if the terms of office of producer members and alternate members on the commission are terminated to meet the requirements of this subdivision.

(d) The industry members shall be elected by and from persons engaged in marketing, packing, or both, who are not engaged in the business of producing, or causing to be produced, apples for market. The commission shall determine the total number of industry members to serve on the commission and may require that they market or pack different varieties of apples. Each varietal committee shall select from among its industry members the persons to serve on the commission. The commission shall adopt procedures which specify the manner in which the membership on the commission shall be modified, if the terms of office of industry members and alternate members on the commission are terminated to meet the requirements of this subdivision.

(e) The public member shall be appointed to the commission by the director from nominees recommended by other members of the commission.

(f) The director and other governmental officers, as determined by the commission, shall be ex officio members of the commission.

75532. (a) The director may require the commission to correct or cease any activity or function of the commission or of any varietal committee which is determined by the director not to be in the public interest or which is in violation of this chapter.

(b) If the commission refuses or fails to cease the specified activities or functions or to make corrections required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission or any varietal committee, or both, until the time that the cessation or correction of the activities or functions, as required by the director, has been accomplished by the commission.

(c) Any action of the commission in violation of the written notice is without legal force or effect. The director, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions which are the subject of the written notice.

(d) At the same time the written notice is provided to the commission, the director shall notify the commission in writing of the specific acts which the director determines are not in the public interest or are in violation of this chapter, the director's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the director's recommendations with respect to any action that will make the activities or functions acceptable.

75533. The commission or the director may bring an action for judicial relief from the director's written notice, or from

noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other appropriate relief.

75534. If the director is required to concur in a decision of the commission or a varietal committee, the director shall concur, refuse to concur, or request additional information from the commission or the varietal committee within 15 working days from the date the director receives the notification of the decision.

75535. The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the director acted arbitrarily or capriciously in restricting the activities or functions of the commission or a varietal committee, relieve the commission of the responsibility for payment of the director's legal costs with regard to that action.

75536. An alternative member to each member of the commission, except the ex officio members, shall be elected in the same manner and for the same term as the member. An alternate member shall, in the absence of the member for whom he or she is alternate, serve in place of the member and shall have and be able to exercise all of the rights, privileges, and powers of the member when serving on the commission. If the status of a member changes, thereby making the member ineligible to serve, or in the event of the death, removal, resignation, or disqualification of a member, the alternate member shall act as a member of the commission until a qualified successor is elected or appointed.

75537. Any vacancy on the commission occurring by the failure of any person elected to or serving on the commission as a member or alternate member to continue in his or her position due to a change in his or her status, thereby making the person ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by a majority vote of all of the remaining members of the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy.

75538. (a) Any producer member and his or her alternate member on the commission shall be a producer or an employee representing a producer who has a financial interest in producing, or causing to be produced, apples for market. Qualifications of producer members and their alternate members shall be maintained during their entire term of office.

(b) Any industry member and his or her alternate member on the commission shall be a person who has a financial interest in marketing or packing, or both, who is not engaged in the business of producing, or causing to be produced, apples for market or an employee representing that person. Qualifications of industry members and their alternate members shall be maintained during their entire term of office.

(c) The public member and his or her alternate member on the commission shall have all of the powers, rights, and privileges of any other member or alternate member, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the apple industry.

(d) Not more than one member and one alternate member shall be persons employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, association, or business organization. Any alternate serving on the commission who is employed by, or connected in a proprietary capacity with, a person serving as a member on the commission from the same company, firm, partnership, or business organization shall serve as an alternate to the member.

75539. The term of office of each member, except ex officio members, is three years, commencing with the beginning of the following marketing year and until a qualified successor is elected or appointed.

However, with respect to the first producer and industry members of the commission, one-third shall serve for one year, one-third shall serve for two years, and one-third shall serve for three years, with the determination of the term of each member within each category to be made by lot.

75540. The terms of office of each member shall be limited to two consecutive terms, except that any member selected to serve an initial one-year or a two-year term may, in addition, serve two consecutive three-year terms.

75541. The commission is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a seal, and has all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

75542. A quorum of the commission is a majority of the voting members of the commission. Except as otherwise provided in this chapter, the vote of a majority of the members present at a meeting at which there is a quorum shall constitute the act of the commission.

75543. The director or his or her representatives shall be notified and may attend each meeting of the commission and varietal committees and any committee meeting of the commission or any varietal committee.

75544. No member or alternate member of the commission, or member of a committee established by the commission who is a nonmember of the commission, shall receive any compensation. Each member of the commission or each alternate member serving in place of a member, except ex officio members, and each member of a committee established by the commission who is a nonmember of the commission, may receive per diem of not more than one hundred dollars ($100) per day, as established by the commission, and may also receive necessary traveling expenses and meal allowances as approved by the commission. The per diem shall be

paid to members for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as approved by the commission.

75545. All funds received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks which the commission may designate and shall be disbursed by order of the commission through an agent or agents designated by the commission for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars ($25,000).

75546. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member, alternate member, employee, or agent of the commission is personally liable for the contracts of the commission nor is any such person responsible individually in any way to any producer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission. Liability is several and not joint, and no member, alternate member, employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

Article 4. Granny Smith Varietal Committee

75551. In addition to the definitions in Article 2 (commencing with Section 75511), the following definitions apply to this article:

(a) "Commercial carton" means a standard container which holds approximately 40 pounds of Granny Smith Apples.

(b) "Committee" means the Granny Smith Apple Varietal Committee.

(c) "Granny Smith Apple" means a variety of apple that is grown in this state that is round-conical in shape, fairly regular, somewhat flattened at its base and apex, and slightly five-crowned at its apex, and has a color range from a bright green to a greenish-white or greenish-yellow, depending upon the geographical area in which the apple is grown, and its maturity.

75552. (a) Each district shall consist of the following counties:

(1) District 1 consists of the Counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial.

(2) District 2 consists of the Counties of Monterey, San Benito, Merced, Tuolemne, Alpine, Mariposa, Mono, Fresno, Madera, Inyo, Kings, and Tulare.

(3) District 3 consists of the Counties of Santa Cruz, Santa Clara, Stanislaus, Calaveras, Amador, El Dorado, Sacramento, Solano, San Mateo, San Francisco, Alameda, Contra Costa, San Joaquin, Placer, Nevada, Sierra, Yuba, Sonoma, Napa, Yolo, Sutter, Shasta, Plumas, Butte, Colusa, Glenn, Lake, Del Norte, Siskiyou, Modoc, Trinity, Lassen, Marin, Tehema, Mendocino, and Humboldt.

(b) The boundaries of any district may be changed by a two-thirds vote of the membership of the committee, which is concurred in by the director, when necessary to maintain similar total production among the districts and to ensure proper representation by handlers. These boundaries need not coincide with county lines.

75553. (a) The Granny Smith Varietal Committee shall be composed of eight producer members and two industry members. Producers within the respective districts shall elect two producers from District 1, three producers from District 2, and three producers from District 3. Two industry members shall be elected by, and from, persons engaged in marketing or packing, or both, who are not engaged in the business of producing, or causing to be produced, Granny Smith Apples for market.

(b) The director and other governmental officers, as determined by the committee, shall be ex officio members of the committee.

75554. The committee has the following powers and duties, in addition to any other power and duty granted by this chapter:

(a) It may appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers the committee deems necessary. The officers have the powers and duties delegated to them by the committee.

(b) It may appoint subcommittees composed of both members and nonmembers of the committee to advise the committee in carrying out this chapter.

(c) It shall recommend to the commission the adoption of advertising and other promotional activities and research programs, and funding for each activity and program.

(d) It shall establish, annually, by two-thirds vote of the membership of the committee, an assessment to defray operating costs, except that in the initial marketing year, the assessment shall be established as provided in subdivision (a) of Section 75556.

(e) It may recommend to the commission the adoption of maturity standards.

(f) It shall provide the commission minutes of its meetings and other records as prescribed by the commission.

(g) It shall prescribe the necessary quorum, which shall be no less than a majority of the membership of the committee, and which shall be the same for all of its meetings.

(h) It may incur expenses as the commission finds reasonable during each fiscal period for the maintenance and function of the

committee and shall pay to the commission an amount determined by the commission to be its proportionate share of the expenses of the commission.

(i) It shall develop and adopt operating procedures.

75555. The committee shall be implemented in accordance with the requirements of Article 7 (commencing with Section 75611).

75556. (a) The committee shall, not later than August 1 of each year, or as soon thereafter as feasible, determine the assessment for the following 12 months beginning August 1 and ending the next July 31. The committee shall establish an assessment in an amount not to exceed twenty cents ($0.20) per commercial carton, or the equivalent thereof, of Granny Smith Apples marketed for fresh consumption in a marketing year. In the initial marketing year, the assessment shall be ten cents ($0.10) per commercial carton, or the equivalent thereof, of Granny Smith Apples marketed for fresh consumption during that marketing year.

(b) The assessments provided for in this section are imposed on producers. Each handler shall deduct the assessment from amounts paid by him or her to the producer and shall be a trustee of the funds until they are paid to the commission at the time and in the manner prescribed by the commission.

(c) An assessment greater than the amount provided in this section may not be imposed unless and until a greater assessment amount is approved by the producers by the vote specified in Section 75612.

75557. During the marketing year which occurs five years after the implementation of this article, the committee shall conduct a referendum among the producers to determine whether the operations of this article shall be approved and continued in effect.

There is a favorable vote under this article if the director determines from the referendum that a majority of the eligible producers voted in favor of continuing the operations of this article. If the director finds that a favorable vote has been given, the director shall so certify and this article shall remain in effect.

If the director finds that a favorable vote has not been given, the director shall so certify and declare the operations of this article suspended at the end of the marketing year. Thereupon, operation of the committee shall be concluded and funds distributed in the manner provided in this chapter. No bond or security shall be required for the referendum.

75558. Following a favorable referendum conducted in accordance with this article, the committee shall conduct a referendum every fifth year thereafter, unless a referendum is conducted as the result of a petition filed pursuant to this article. In that case, the referendum shall be held every fifth year, pursuant to the procedure provided in Section 75557, following the industry petitioned referendum.

75559. (a) Upon a finding by a two-thirds vote of the membership of the committee that the operation of this article has

not tended to effectuate its declared purposes, the committee may recommend to the director that the operation of this article be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The director shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the director requesting a suspension signed by not less than 20 percent of the producers by number who produced not less than 20 percent of the total volume of Granny Smith Apples in the immediately preceding marketing year, hold a referendum among the producers to determine if the operations of the committee shall be suspended. However, the director shall not hold a referendum as a result of the petition, unless the petitioner shows, by a preponderance of evidence, in a manner prescribed by the director, that the operation of this article has not tended to effectuate its declared purposes.

(c) The director shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period. The director shall suspend the operation of this article if the director finds that at least 40 percent of the total number of producers from the list established by the director have participated in the referendum and that either one of the following has occurred:

(1) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting produced and marketed a majority of the total quantity of Granny Smith Apples in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting produced and marketed 65 percent or more of the total quantity of Granny Smith Apples in the preceding marketing year by all of the producers who voted in the referendum.

75560. (a) The director shall terminate the committee at the end of the then current marketing year if the director finds that the termination of the committee is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that produce and market at least 51 percent of the total volume of Granny Smith Apples.

(b) The person or persons originating the request shall file a written notice with the director in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the director.

(c) The signatures on the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition shall specify his or her place of business in a manner that will enable the location to be readily ascertained.

(d) The petition shall bear a copy of the notice of intention to terminate the committee. Signatures shall be secured within the time limit specified in this section.

75561. After the effective date of the suspension, the operation of this committee shall be concluded and any and all funds remaining, held by the committee or commission, and not required to defray the expenses of concluding and terminating the operations of the committee, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining, after the payment of all expenses of winding up and terminating operations, shall be withdrawn from the approved depository and paid into an appropriate program conducted by the University of California or the California State University, another state agency, or a federal agency which deals with the purposes of this chapter. If no program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

75562. Upon suspension of this article, the commission shall mail a copy of the notice of suspension to all producers and handlers whose names and addresses are on file with the commission and to the appropriate policy committees in both the Assembly and Senate.

Article 5. Other Varietal Committees

75571. Producers of any variety of apples grown in California may petition the commission to be established as a varietal committee. If the petition is approved by a two-thirds vote of the membership of the commission, the director shall conduct an implementation vote in accordance with the requirements of Article 7 (commencing with Section 75611).

75572. The petition shall contain any and all information required by the commission under this chapter. The petition filed with the commission shall include, but not be limited to, recommendations for committee membership, districts, fiscal year, and the maximum fees imposed under this chapter.

75573. Once established, the committee may engage in all activities authorized by this chapter for varietal committees.

Article 6. Powers and Duties of the Commission

75581. The powers and duties of the commission shall include, but are not limited to, all of those specified in this article.

75582. The commission may adopt, amend, and repeal regulations and operating procedures necessary to carry out this chapter, including regulations governing appeals from actions taken by the commission pursuant to any of its regulations or operating procedures.

75583. The commission may administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, the proper or advisable implementation of this chapter.

75584. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

75585. The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or agency of the state or federal government to perform the functions prescribed by this section under the control of the commission. If any person employed by the commission 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 person.

75586. The commission may fix the compensation for all employees of the commission.

75587. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

75588. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, borrow funds in advance of receipt of assessments, and repay producers for costs incurred during the initial formation of the commission, 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.

75589. The commission shall keep accurate books, records, and accounts of all its dealings which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. A summary of the audit shall be reported to all producers and a copy of the summary shall also be submitted to the director. 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.

75590. The commission may present facts to, and negotitate with, state, federal, and foreign agencies on matters which affect this chapter.

75591. The commission may make, in its name, contracts to receive or render services in formulating and conducting plans and programs and any other contracts or agreements that the

commission deems necesary for carrying out this chapter.

75592. The commission may conduct, and contract with others to conduct, production research, including the study, analysis, accumulation, and dissemination of information obtained from that research or otherwise, regarding this chapter.

75593. The commission may accept contributions of private, state, or federal funds, and make contributions of funds to other persons or state or federal agencies, for purposes of this chapter.

75594. The commission may promote the sale of apples 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 apples, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of apples.

75595. The commission may publish and distribute without charge, bulletins and other communications for dissemination of information to persons subject to this chapter.

75596. The commission shall adopt an annual budget according to accepted accounting practices. The director shall concur in the adoption of the budget prior to the encumbrance of funds, except for encumbrances necessary to pay the compensation of employees of the commission.

75597. The commission shall annually prepare and submit to the director, for his or her concurrence, a statement of contemplated activities authorized pursuant to this chapter.

75598. The commission and the director shall keep confidential and shall not disclose, except when required in a judicial proceeding, all lists of persons subject to this chapter in their possession.

75599. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

75600. The commission may approve petitions for the formation of varietal committees, accept or reject recommendations of varietal committees, and apportion the cost in administering this chapter among all the varietal committees.

75601. (a) The commission may recommend to the director the adoption of maturity standards authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of Division 21) that are in accordance with the procedures specified in that act, unless otherwise specified in this article.

(b) Any standards that are adopted shall be implemented by the director at the beginning of the marketing year next succeeding the date in which they were approved by the director.

(c) Any standards recommended by the commission and approved by the director shall not be operative until approved by the vote specified in Section 75612.

(d) The commission shall serve as the advisory body to the

director on all matters pertaining to this section.

Article 7. Implementation and Voting Procedures

75611. (a) Within 90 days of receiving a petition signed by 20 eligible producers of the variety of apples referenced in the petition who acknowledge in a manner satisfactory to the director that they support the formation of the commission and, thereafter, within 30 days after the establishment of any varietal committee, the director shall establish a list of producers eligible to vote. In establishing the list, the director may require that producers, handlers, persons engaged in packing and marketing, and agricultural commissioners submit the names and mailing addresses of all known producers who are subject to this chapter. The director also may require that the information provided include the quantity of apples produced by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in this article. The request for the information shall be in writing, and the requested information shall be filed within 30 days following receipt of the request.

(b) Any producer whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the director a signed statement identifying himself or herself as a producer. The absence of a producer's name from the list does not exempt the producer from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact producers on the lists in a form and manner prescribed by the director so long as all expenses associated with the contacts are paid in advance.

75612. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the director finds, in a referendum vote conducted by the director that at least 40 percent of the total number of producers from the list established by the director pursuant to this article have participated and that either of the following has occurred:

(a) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting produced and marketed a majority of the total quantity of apples in the preceding marketing year by all of the producers who voted in the referendum.

(b) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting produced and marketed 65 percent or more of the total quantity of apples in the preceding marketing year by all of the producers who voted in the referendum.

75613. The director shall establish a period to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may

be necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend the period to not more than 60 days.

75614. The failure of a producer to receive a ballot shall not invalidate a referendum.

75615. If the director finds that a favorable vote has been given as provided in this article, the director shall certify and give notice of the favorable vote to all producers whose names and addresses are on file with the director.

75616. If the director finds that a favorable vote has not been given as provided in this article, the director shall certify and declare this chapter inoperative and shall notify the appropriate policy committees in the Assembly and Senate. The director may conduct another implementation referendum vote one or more years after the previous vote has been taken.

75617. Upon certification of the commission or a varietal committee, if applicable, the director shall do the following:

(a) Contact all producers in each district by mail or call meetings of producers in each district for the purpose of nominating and electing persons to the commission. Any person who is a producer in more than one district is eligible to participate in the nomination and election of persons from the district in which he or she produces the majority of the total amount of apples that he or she produces. All producers on the director's list shall be given written notice of any election meeting at least 10 days prior to the meeting date. To be eligible for election, producer nominees shall present to the director a nomination petition with the signatures of at least five eligible producers from the district from which the nominee is seeking election.

(b) Contact all persons engaged in marketing or packing, or both, who are not engaged in the business of producing, or causing to be produced apples for market by mail or by calling a meeting for the purpose of nominating and electing persons. The director shall give a written notice of any election meeting at least 10 days prior to the meeting date. To be eligible for election, industry nominees shall present to the director a nomination petition with the signatures of at least two eligible persons who are engaged in the same type of industry activity as the person seeking nomination.

75618. Subsequent to the first election of members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures which are adopted by the commission with the concurrence of the director.

75619. (a) Prior to the director holding the referendum pursuant to this article, the proponents of the commission shall deposit with the director the amount that the director determines necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum.

(b) Any funds not used in carrying out this article shall be

returned to the proponents of the commission who deposited the funds with the director.

(c) Upon the establishment of the commission, or a varietal committee, the commission may reimburse the proponents of the commission or a varietal committee, for any funds deposited with the director which were used in carrying out this article and for any legal expenses and other costs incurred in establishing the commission, or a varietal committee.

Article 8. Assessments and Records

75631. The assessments established pursuant to this chapter do not apply to production on a noncommercial basis for the producer's home use, or where the trees are used only for ornamental purposes. Those producers from whom assessments are collected may apply for the refund of the payments following the close of any marketing season in which the payments have been made, and the commission shall refund those assessment payments if the producer can demonstrate, to the satisfaction of the commission, that he or she is not subject to this chapter.

75632. Every handler shall keep a complete and accurate record of all apples handled. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the handler for two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

75633. (a) All proprietary information obtained by the commission or the director from producers or handlers are confidential and shall not be disclosed except when required in a judicial proceeding.

(b) Information on volume shipments, product value and any other related information which is required for reports to governmental agencies financial reports to the commission or aggregate sales and inventory information and any other information which the commission requires that gives only totals, but excludes individual producer or handler information may be disclosed by the commission.

75634. Any assessment which is imposed on the producer as provided for in this chapter is a personal debt of that producer.

75635. Every handler is personally liable for the payment of the assessments to the commission. The failure of a handler to collect the assessment shall not exempt the handler from liability and shall not relieve any producer subject to this chapter from the obligation to pay the assessment.

75636. Any producer or handler who fails to file a return or pay the assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 1.5 percent interest per month on the unpaid balance.

75637. If the producer or handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for violating this chapter, including, but not limited to, failing to pay the assessments or to collect the assessments, shall also include identical liability upon each director or officer of the corporation.

Article 9. Actions and Penalties

75641. It is a misdemeanor for any person to do any of the following:

(a) Refuse to render a report, statement, or record required by the commission.

(b) Furnish a false report, statement, or record required by the commission.

(c) Fail or refuse to furnish the commission or its duly authorized agents, information concerning the names and addresses of persons from whom apples have been received and the quantity so received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

75642. The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations or the actions of a varietal committee an informal hearing before the commission or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the director. The determination of the director is subject to judicial review upon petition filed with the appropriate superior court.

75643. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of that code is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from

conducting any type of business involving apples until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it is entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

75644. The suspension or termination of this chapter shall not affect or waive any right, duty, obligation, or liability which has arisen or which may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

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 1077

An act to amend Sections 7204.3 and 7273 of, and to amend and repeal Section 7273.1 of, the Revenue and Taxation Code, relating to transportation.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 7204.3 of the Revenue and Taxation Code is amended to read:

7204.3. The board shall charge a city, city and county, redevelopment agency, or county, as the cost of the board's services in administering the sales and use tax ordinance of the local entity, the following amounts:

(a) 0.82 percent of all sales and use taxes available for distribution to the city, city and county, redevelopment agency, or county on and after July 1, 1972, and before July 1, 1991.

(b) 0.79 percent of all sales and use taxes available for distribution to the city, city and county, redevelopment agency, or county on and after July 1, 1991.

Those amounts shall be deducted from the taxes collected by the board for the city, city and county, redevelopment agency, or county.

SEC. 2. Section 7273 of the Revenue and Taxation Code is amended to read:

7273. Effective July 1, 1991, in addition to the amounts otherwise provided for preparatory costs, except as provided in Section 7273.1, the board shall charge the following for its services in administering the transactions and use tax:

(a) For any district which is authorized to impose a transactions and use tax at a rate of 1 percent, 0.79 percent of all district taxes that would be available for distribution to the district on and after July 1, 1991.

(b) For any district which is authorized to impose a transactions and use tax at a rate of one-half of 1 percent, 1.49 percent of all district taxes that would be available for distribution to the district on and after July 1, 1991.

(c) For any district which is authorized to impose a transactions and use tax at a rate of one-half of 1 percent and which has boundaries which are overlapping or coextensive with the boundaries of another district also authorized to impose a transactions and use tax, 1.30 percent of all district taxes that would be available for distribution to the district on and after July 1, 1991.

(d) The amounts specified in subdivisions (a), (b), and (c) shall be deducted form the taxes collected by the board for a given district.

SEC. 3. Section 7273.1 of the Revenue and Taxation Code is amended to read:

7273.1. Notwithstanding Section 7273, the board shall charge the Santa Clara Traffic Authority and the Santa Clara Transit District each 0.82 percent of all district taxes available for distribution to the district on and after July 1, 1986, and prior to July 1, 1991. Those amounts shall be deducted from the taxes collected by the board for each district.

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.

CHAPTER 1078

An act to amend Sections 207.1 and 209 of the Welfare and Institutions Code, relating to youth.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. 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 Department of 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 Department of 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 Department of 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 Department of 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 Department of 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 Department of the Youth Authority. The technical assistance shall take such form as the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of 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 July 1, 1991, 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 Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of 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 Department of 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 Department of the Youth Authority. The extensions may only be granted by the Department of 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 Department of 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 Department of 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 Department of the Youth Authority to an offshore law enforcement facility. The extension may only be granted by the Department of 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 Department of 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 Department of 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 Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking 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 Department of 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 lockups. Based upon the information provided by the county, the Department of 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 Department of 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 Department of 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. 2. 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, 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, 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 (i) 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.

CHAPTER 1079

An act to add Title 1.86 (commencing with Section 1799.200) to Part 4 of Division 3 of the Civil Code, and to amend Section 757 of the Financial Code, relating to contracts.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Title 1.86 (commencing with Section 1799.200) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.86. CONSUMER CONTRACT AWARENESS ACT OF 1990

1799.200. This title shall be known and may be cited as the Consumer Contract Awareness Act of 1990.

1799.201. As used in this title:

(a) "Consumer" means a natural person who has entered into a consumer contract with a seller.

(b) "Consumer contract" means a writing prepared by a seller and signed by a consumer which provides (1) for the sale of goods or services that are purchased primarily for personal, family, or household purposes, or (2) for extension of credit, the proceeds of which are used primarily for personal, family, or household purposes.

(c) "Consumer contract guaranty" means a writing prepared by a seller and signed by a guarantor which guarantees the obligation of a consumer under a consumer contract.

(d) "Copy" means a reproduction, facsimile, or duplicate.

(e) "Goods" means tangible and intangible personal property.

(f) "Guarantor" means a person who guarantees the obligation of a consumer under a consumer contract by signing a consumer contract guaranty.

(g) "Seller" means a person who has entered into a consumer contract with a consumer.

(h) "Services" means work, labor, and services, including depository services and other banking services.

(i) "Financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, insurance company, or person engaged in the business of lending money.

1799.202. (a) Except as otherwise provided in this title, a seller shall deliver a copy of the consumer contract to the consumer at the time the contract is signed by the consumer if the consumer contract is signed at a place of business of the seller. If the consumer contract is not signed by the consumer at a place of business of the seller, the seller shall mail or deliver a copy of the consumer contract to the

consumer within 10 days after the seller receives the consumer contract.

(b) A seller that is a financial institution need not deliver to the consumer, pursuant to subdivision (a), any writing which the consumer contract incorporates by reference if either of the following conditions apply:

(1) The writing was previously delivered or mailed to the consumer.

(2) The writing was not prepared by the seller.

(c) If the consumer contract is a signature card which is utilized for providing consumer identification and maintaining confidentiality with respect to an account at a financial institution, a document which includes the same terms as those contained in the consumer contract shall be deemed a copy.

1799.203. (a) It shall be deemed compliance with Section 1799.202 if a copy of any consumer contract which is subject to Article 10 (commencing with Section 1810.1) of Chapter 1 of Title 2, or which is an open-end consumer credit plan subject to Section 127 of the federal Truth in Lending Act (15 U.S.C. 1637), is delivered or mailed to the consumer before the consumer enters into a transaction covered by the consumer contract.

(b) Section 1799.202 does not apply to any of the following:

(1) A consumer contract for the purchase of goods by mail if the seller permits the consumer to examine the goods for seven calendar days and cancel the consumer contract and receive a full refund within 30 calendar days for returned unused and undamaged goods.

(2) A written contract created by, and consisting of, an exchange of letters by mail.

(3) A specific class or type of consumer contract which is required to be mailed or delivered at a time prescribed by another law of this state or the United States.

1799.204. If more than one consumer has signed a consumer contact, the seller may comply with Section 1799.202 by mailing or delivering the copy to any one of the consumers who reside at the same address. A copy shall also be mailed or delivered to any other consumer who has signed the consumer contract and who does not reside at the same address.

1799.205. (a) A seller who fails to comply with Section 1799.202 is liable to the consumer for any actual damages suffered by the consumer as the result of that failure. The remedy provided by this subdivision is nonexclusive and is in addition to any other remedies or penalties available under other laws of this state.

(b) Failure to comply with Section 1799.202 does not create a new basis for the rescission, but is admissible to establish a basis for the rescission of the contract otherwise authorized by law.

1799.206. (a) Except as otherwise provided in this section, a seller shall deliver a copy of the consumer contract guaranty to the guarantor at the time the consumer contract guaranty is signed by the guarantor if the consumer contract guaranty is signed by the

guarantor at a place of business of the seller. If the consumer contract guaranty is not signed by the guarantor at a place of business of the seller, the seller shall mail or deliver a copy of the consumer contract guaranty to the guarantor within 10 days after the seller receives the consumer contract guaranty.

(b) If more than one guarantor has signed the consumer contract guaranty, the seller may comply with subdivision (a) by mailing or delivering the copy to any one of the guarantors who reside at the same address. A copy shall also be mailed or delivered to any guarantor who has signed the consumer contract guaranty and who does not reside at the same address.

(c) A seller that fails to comply with this section is liable to the guarantor for any actual damages suffered by the guarantor as the result of that failure. The remedy provided by this subdivision is nonexclusive and in addition to any other remedies or penalties available under other laws of this state.

(d) Failure to comply with this section does not create a new basis for rescission, but is admissible to establish a basis for rescission of the consumer contract guaranty otherwise authorized by law.

SEC. 2. Section 757 of the Financial Code is amended to read:

757. (a) A bank or trust company may engage in the business of renting safe deposit boxes and may receive personal property for safekeeping and storage on its banking premises.

(b) A copy of any safe deposit rental agreement, or personal property safekeeping and storage agreement, which is prepared by the bank or trust company and signed by the customer shall be delivered to the customer at the time the agreement is signed if the agreement is signed at a place of business of the bank or trust company. If the agreement is not signed at a place of business of the bank or trust company, the bank or trust company shall mail or deliver a copy of the agreement to the customer within 10 days after the bank or trust company receives it. If more than one customer has signed the agreement, the bank or trust company may comply with this section by mailing or delivering the copy to any one of the customers who reside at the same address. A copy shall also be mailed or delivered to any other customer who has signed the agreement and who does not reside at the same address. As used in this section "copy" means a reproduction, facsimile, or duplicate. A bank or trust company which fails to comply with this section is liable to its customer for any actual damages suffered by the customer as a result of that failure. The remedy provided by this section is nonexclusive and is in addition to any remedies or penalties available under other laws of this state.

SEC. 3. This act shall become operative July 1, 1991.

CHAPTER 1080

An act to add Sections 27564 and 27565 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 27564 is added to the Streets and Highways Code, to read:

27564. The Legislature finds and declares as follows:

(a) Automatic vehicle identification systems when used for toll collection can speed up the flow of traffic at toll facilities and reduce collection costs.

(b) More than one system and technology is available.

(c) Currently, the department and the district operate toll bridges and other entities may soon operate toll roads or bridges.

(d) There are no permanent automatic vehicle identification systems for toll collection in the state at this time and none of the facility operators have selected a system or technology for future implementation.

(e) It is in the best interest of vehicle owners and operators that the automatic vehicle identification systems and technology used by all toll facility operators are compatible with one another.

(f) Compatible automatic vehicle identification systems can be selected for statewide use without requiring the purchase and installation from a single vendor or producer.

SEC. 2. Section 27565 is added to the Streets and Highways Code, to read:

27565. (a) The Department of Transportation, in cooperation with the district and all known entities planning to implement a toll facility in this state, shall develop and adopt functional specifications and standards for an automatic vehicle identification system, in compliance with the following objectives:

(1) In order to be detected, the driver shall not be required to reduce speed below the applicable speed for the type of facility being used.

(2) The vehicle owner shall not be required to purchase or install more than one device to use on all toll facilities, but may be required to have a separate account or financial arrangement for the use of these facilities.

(3) The facility operators shall have the ability to select from different manufacturers and vendors. The specifications and standards shall encourage multiple bidders, and shall not have the effect of limiting the facility operators to choosing a system which is able to be supplied by only one manufacturer or vendor.

(b) Any automatic vehicle identification system purchased or

installed after January 1, 1991, shall comply with the specifications and standards adopted pursuant to subdivision (a).

CHAPTER 1081

An act to amend Sections 56273, 56279, 56280, 56281, and 56282 of, and to add Section 56273.1 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 56273 of the Food and Agricultural Code is amended to read:

56273. The full amount which is realized from the sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sales, as provided in Section 56273.1, shall be remitted to the consignor within 10 days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing.

SEC. 2. Section 56273.1 is added to the Food and Agricultural Code, to read:

56273.1. (a) For purposes of this chapter, an account of sales shall be deemed complete if it consists of all of the following information:

(1) The date of shipment.

(2) The terms of the original sale concerning where and when title passes.

(3) The commodity, variety, size, and grade.

(4) The quantity shipped.

(5) The quantity disposed of in a manner other than sale by the buyer, if applicable.

(6) The original selling price.

(7) The adjusted selling price, if applicable.

(8) The reason for adjustment, if applicable.

(9) Amounts billed and collected from the buyer for services rendered to the buyer by the commission merchant.

(10) The gross and net returns received from the buyer.

(11) Any authorized commission merchant charges.

(12) Any additional amounts paid to the consignor by the commission merchant to support the original price.

(13) The net amount due the consignor.

(b) The consignor and the commission merchant may agree on the documentation necessary to support the information required by subdivision (a). The agreements shall be made, in writing, prior to the shipping season of the particular farm product.

SEC. 3. Section 56279 of the Food and Agricultural Code is

amended to read:

56279. The burden of proof shall be upon the commission merchant to prove the correctness of any accounting required to be performed by the commission merchant pursuant to this chapter as to any transaction which may be questioned.

SEC. 4. Section 56280 of the Food and Agricultural Code is amended to read:

56280. (a) A commission merchant shall notify each consignor with whom he or she does business of this section. The notice shall be given in writing prior to the shipping season of the particular farm product.

(b) No charge shall be made against a consignor's account for a downward price adjustment or a reduction in quantity of farm products delivered due to a breach of contract, unless the commission merchant has, in his or her files, a federal-state inspection certificate, issued pursuant to the United States Agricultural Marketing Act of 1946, (7 U.S.C. 1621, et seq.), indicating the type and the extent of the substandard condition of the lot involved in the breach of contract, thereby supporting the amount charged against the consignor's account. The commission merchant need not obtain a federal-state inspection certificate unless the lot involved is of a substandard condition.

(c) Notwithstanding Section 56281, this section does not preclude a consignor from agreeing to a downward price adjustment or a reduction in the quantity of farm products delivered and waiving the right to inspection when the agreement was made prior to the shipping season of the particular farm product and was in writing.

(d) The federal-state inspection certificate may be substituted by a private third-party inspection, based on the standards prescribed under the United States Agricultural Marketing Act of 1946, if the director determines, to his or her satisfaction, that a federal-state inspection certificate could not reasonably be obtained. If the director determines, to his or her satisfaction, that neither a federal-state inspection certificate nor private, third-party inspection, can be reasonably obtained, a signed statement of two or more disinterested, or otherwise independent parties, who have sufficient knowledge, acquired through education or experience, to evaluate the farm product involved, may be used as substitute for the federal-state certificate or third-party inspection, in order to make a statement as to the quality and condition of the lot of farm product at the time of inspection.

(e) Where the condition of the lot is not substandard but for other reasons, including a decline in market demand, there is a downward price adjustment, the commission merchant shall affirm, in writing, that the lot was at least of standard quality at the time of sale. The affirmation shall be attached to, or made part of, the records of the consignment.

(f) As used in this section, "lot" means the farm product identified by the procedure set forth in subdivision (h) of Section 56271.

SEC. 5. Section 56281 of the Food and Agricultural Code is amended to read:

56281. A commission merchant shall notify each consignor with whom he or she does business of the provisions affecting the consignor which are contained in Sections 56271, 56272, 56273, 56280, 56282, and 56351, and this section. The notice shall be given in writing prior to the shipping season of the particular farm product. The notice shall include a form whereby the consignor may request notice of any adjustment by the commission merchant. The form shall also include a provision whereby the consignor may request that lot numbers be affixed on each individual farm product container as provided in subdivision (h) of Section 56271. Each commission merchant shall keep the records necessary to prove that the notices were given to each consignor in accordance with this section. When requested by his or her consignor prior to, or at any time during, the shipping season, a licensee operating as a commission merchant shall notify the consignor of any adjustment on a transaction, and provide reasons for the adjustment, within 48 hours.

If the commission merchant is unable to contact the consignor by telephone or in person, the notification shall be immediately provided by mail.

SEC. 6. Section 56282 of the Food and Agricultural Code is amended to read:

56282. (a) Pursuant to this chapter, upon the verified complaint of the consignor, the director may disallow to a commission merchant, all or part of, any adjustment charged back to any consignor similarly situated, if the director determines that there is insufficient justification of the condition or circumstances requiring the adjustment.

(b) In determining whether there is insufficient justification for an adjustment, the director shall first determine if any waivers or agreements have been entered into pursuant to this chapter. If a waiver or agreement has been entered into and the director determines that the waiver or agreement does not violate this chapter, the director's inquiry in determining this adjustment shall be governed by the terms and conditions of the waiver or agreement.

(c) If there is no waiver or agreement, or if the waiver or agreement violates this chapter, as determined by the director, in determining whether there is insufficient justification for an adjustment, the director shall consider, among other things, the following:

(1) The certificate issued pursuant to Section 56280 or 56351 does not support breach of contract.

(2) The perishability of the farm product involved and the timely issuance of the certificate pursuant to Section 56280 or 56352.

(3) Market reports or other market evidence does not support a downward price adjustment in accordance with Section 56279.

CHAPTER 1082

An act to amend Sections 179.3 and 179.4 of, and to add Sections 179.7 and 179.8 to, the Streets and Highways Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 179.3 of the Streets and Highways Code is amended to read:

179.3. (a) The department shall be the lead agency for the seismic evaluation of publicly owned bridges throughout the state, except for those bridges not on the state highway system in the County of Los Angeles and in the unincorporated areas of the County of Santa Clara, in which cases the respective counties shall be the lead agency.

(b) The appropriate lead agency shall review the structural design and construction details of all publicly owned bridges for which it is the lead agency and shall assess the need for seismic retrofit work, taking into account the structural deficiencies which surfaced following the Sylmar, Whittier, and 1989 Loma Prieta earthquakes.

(c) For each bridge for which it is determined that seismic structural deficiencies exist, the lead agency shall identify a retrofit project to be funded from the account.

(d) (1) Funds shall be allocated by the director to the department, or the local agency, as the case may be, whose bridge is to be retrofitted. Of the funds appropriated by subdivision (a) of Section 8 of Chapter 18 of the Statutes of 1989, First Extraordinary Session, sixty million dollars ($60,000,000) shall be allocated to the department for the state retrofit program and to meet matching requirements for any federal funds available for that purpose. The sum of twenty million dollars ($20,000,000) shall be allocated to local agencies, for expenditure on retrofit projects identified by them pursuant to subdivision (b). Of the amount allocated to local agencies, highest priority shall be given to identifying and retrofitting bridges found to be seismically deficient.

(2) For purposes of the allocations to local agencies under paragraph (1), the director shall include in the allocation to the Counties of Los Angeles and Santa Clara an additional amount for those counties' administrative overhead and other federally nonreimbursable costs associated with their activities conducted pursuant to subdivision (b).

(e) The director shall notify the commission at least once annually of the amount of federal highway capital outlay funds required by

the department to accomplish seismic retrofit work in accordance with the deadlines set forth in subdivision (b) of Section 179.4. Upon receiving that notification, the commission shall promptly allocate those funds to the department from federal funds appropriated by the Legislature which are authorized to be used for this purpose.

(f) For purposes of this section, "bridges" includes pedestrian bridges and rail transit bridges.

SEC. 2. Section 179.4 of the Streets and Highways Code is amended to read:

179.4. (a) The department and the Counties of Los Angeles and Santa Clara shall immediately proceed to implement this article by developing criteria for the assessment and prioritization of bridge retrofit needs and by collecting data that will be evaluated by that criteria. The director shall establish a statewide priority list for seismic retrofit projects based on the bridge assessments performed by the department and the Counties of Los Angeles and Santa Clara, taking into account the assigned risk given to any bridge or structure, the exposure of the public in case of a structural failure, and the probability of the occurrence of an earthquake in any given area.

(b) The department and the Counties of Los Angeles and Santa Clara shall prepare or cause the preparation of retrofit plans, specifications, and estimates for all projects included in the priority list established pursuant to subdivision (a). All affected local agencies, for projects within their respective jurisdictions, and the department, with respect to projects on state highways, shall by December 31, 1991, execute the necessary construction contracts for all projects on the priority list, except that construction contracts for projects involving the retrofitting of multiple-column bents, for which the identification of appropriate structural solutions is dependent upon active research, may be delayed so long as they are executed on or before December 31, 1993. All deficient bridges and structures shall be retrofitted or replaced by December 31, 1992, except for bridges and structures involving the retrofitting of multiple-column bents, which shall be completed by December 31, 1994.

SEC. 3. Section 179.7 is added to the Streets and Highways Code, to read:

179.7. For purposes of this article, "retrofit" includes both the structural modification of an existing bridge and the replacement of an existing bridge by a newly constructed bridge meeting seismic safety requirements.

SEC. 4. Section 179.8 is added to the Streets and Highways Code, to read:

179.8. Each annual proposed budget prepared pursuant to Section 165 shall include an amount recommended to be transferred from the State Highway Account to the Seismic Safety Retrofit Account. This amount shall be based on the department's estimate of state funds necessary to fund the seismic retrofit program during the year of the proposed budget.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The major northern California earthquake which occurred on October 17, 1989, and its aftershocks caused severe damage and destruction to essential highways, roads, and bridges in the San Francisco Bay area. In order to expedite the emergency retrofitting of transportation facilities, and protect persons using the highways from unreasonable risk of personal injury from seismically unsafe facilities and to ensure the uninterrupted conduct of commerce in the state, it is necessary that this act take effect immediately.

CHAPTER 1083

An act to amend Sections 13146 and 17958.5 of, to add Sections 13143.2, 13143.5, and 13869.7 to, and to repeal Section 17920.7 of, the Health and Safety Code, relating to building standards.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. This act shall be known and may be cited as the "Green-Hansen Fire Safety Act of 1990."

SEC. 2. Section 13143.2 is added to the Health and Safety Code, to read:

13143.2. (a) Except as provided in Section 18930, the State Fire Marshal shall adopt, amend, and repeal fire safety rules and regulations, and, except as otherwise provided in this part and Part 1.5 (commencing with Section 17910) of Division 13, the State Fire Marshal shall enforce building standards published in the California Building Standards Code and those other rules and regulations adopted by the State Fire Marshal for the provision of structural fire safety and fire-resistant exits in multiple-story structures existing on January 1, 1975, let for human habitation, including, and limited to, apartment houses, hotels, and motels wherein rooms used for sleeping are let above the ground floor. The State Fire Marshal shall adopt, amend, or repeal, and shall submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13. The rules and regulations and building standards shall provide adequate safety to the occupants and the general public, and shall be consistent with the requirements contained in subdivisions (d), (e), (f), (g), (h), (i), (k), and (*l*) of Section 1215 of Part 2 of the California Building Standards Code, 1990 edition, or similar successor standards of the California Building Standards Code.

Except as provided in Section 18930, the department, with the written approval of the State Fire Marshal, may allow reasonable exceptions to subdivisions (e) and (g) of Section 1215 of Part 2 of the California Building Standards Code, 1990 edition, or similar successor standards of the California Building Standards Code, to permit the continued use of existing stairs and to subdivision (*l*) of Section 1215 to permit equivalent protection in lieu of occupancy separations. However, the exceptions shall not impair occupant safety and shall be consistent with the legislative intent of this section.

The building standards adopted by the State Fire Marshal and submitted for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 shall not require that interior stairs and vertical openings be enclosed in two-story buildings.

(b) Notwithstanding subdivision (a), any city, county, or city and county may adopt building standards for structural fire safety and fire-resistant exits in structures subject to this section. However, those building standards shall be substantially equivalent in fire safety to, or more stringent in fire safety than, the building standards published in the California Building Standards Code. Each city, county, or city and county adopting alternative standards shall submit a detailed statement, with supporting data, to the State Fire Marshal of the alternate standards to the state building standards and other regulations adopted by the State Fire Marshal. The State Fire Marshal shall make a finding as to whether the alternative local standards are equivalent to the requirements of the California Building Standards Code. It is the intention of the Legislature that the building standards adopted and published in the California Building Standards Code shall be consistent with the requirements for new construction contained in the Uniform Building Code, 1988 edition, or similar successor standards adopted in accordance with Section 18928, except as otherwise required by state or federal law.

(c) This section shall not apply to any apartment house, hotel, or motel existing on May 14, 1979, having floors, as measured from the top of the floor surface, used for human occupancy located more than 75 feet above the lowest floor level having building access which is subject to Chapter 3 (commencing with Section 13210) of Part 2 of Division 12 relating to highrise buildings existing on May 14, 1979.

(d) The enforcement agency shall make inspections to the extent necessary to identify the structures within its jurisdiction in violation of the rules and regulations adopted pursuant to this section, and all structures subject to this section shall be conformed to the requirements contained in those regulations.

(e) All structures governed by Part 2.7 (commencing with Section 18950) of Division 13 are exempt from the permissive authority granted by subdivision (b).

SEC. 3. Section 13143.5 is added to the Health and Safety Code, to read:

13143.5. (a) Notwithstanding Part 2 (commencing with Section 13100) of Division 12 of Part 1.5 (commencing with Section 17910)

of Division 13, and Part 2.5 (commencing with Section 18901) of Division 13, any city, county, or city and county may, by ordinance, make changes or modifications that are more stringent than the requirements published in the California Building Standards Code relating to fire and panic safety and the other regulations adopted pursuant to this part. The adopted standards shall be reasonably necessary because of local climatic, geological, or topographical conditions. Before adopting the ordinance, the city, county, or city and county shall make an express finding that the ordinance is reasonably necessary because of local climatic, geological, or topographical conditions. The finding shall be available as a public record. A copy of the findings, together with the modification or change expressly marked and identified to which each finding refers, shall be filed with the Department of Housing and Community Development.

(b) Nothing in this section shall authorize a local jurisdiction to mandate, nor prohibit a local jurisdiction from mandating, the installation of residential fire sprinkler systems within newly constructed dwelling units or in new additions to existing dwelling units, including, but not limited to, manufactured homes as defined in Section 18007.

(c) Nothing in this section shall authorize a local jurisdiction to mandate, nor prohibit a local jurisdiction from mandating, the retrofitting of existing dwelling units for the installation of residential fire sprinkler systems, including, but not limited to, manufactured homes as defined in Section 18007.

(d) Nothing in this section shall apply in any manner to litigation filed prior to January 1, 1991, regarding an ordinance or regulation which mandates the installation of residential fire sprinkler systems within newly constructed dwelling units or new additions to existing dwelling units.

(e) This section shall not apply to fire and panic safety requirements for the public schools adopted by the State Fire Marshal pursuant to Section 13143.

(f) The same agency or entity to whom authority to enforce building standards not related to fire and panic safety is delegated by the city, county, or city and county with jurisdiction in the area affected by the building standard shall enforce any building standard adopted pursuant to this section.

(g) On or before October 1, 1991, and each October 1 thereafter, the Department of Housing and Community Development, in conjunction with the office of the State Fire Marshal, shall transmit a report to the State Building Standards Commission on the more stringent requirements, adopted by a city, county, or city and county, pursuant to this section or adopted by a fire protection district and ratified pursuant to Section 13869.7, to the building standards relating to fire and panic safety adopted by the State Fire Marshal and contained in the California Building Standards Code. The report shall be for informational purposes only and shall include a summary

by the department and the office of the reasons cited as the necessity for the more stringent requirements. The report required pursuant to this subdivision shall apply to any more stringent requirements adopted or ratified on or after January 1, 1991.

(h) All structures governed by Part 2.7 (commencing with Section 18950) of Division 13 are exempt from the permissive authority granted by subdivision (a).

SEC. 4. Section 13146 of the Health and Safety Code is amended to read:

13146. The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:

(a) The same agency or entity to whom authority to enforce building standards not related to fire and panic safety is delegated by the city, county, or city and county with jurisdiction in the area affected by the building standard shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal as they relate to R-3 occupancies, as defined in Section 1201 of Part 2 of the California Building Standards Code.

(b) The chief of any city or county fire department or of any fire district, and their authorized representatives, shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal, except those described in subdivision (a) or (d).

(c) The State Fire Marshal shall have authority to enforce such building standards and other regulations of the State Fire Marshal in areas outside of corporate cities and districts providing fire protection services.

(d) The State Fire Marshal shall have authority to enforce such building standards and other regulations of the State Fire Marshal in corporate cities and districts providing fire protection services upon request of the chief fire official or the governing body.

SEC. 5. Section 13869.7 is added to the Health and Safety Code, to read:

13869.7. (a) Any fire protection district organized pursuant to Part 2.7 (commencing with Section 13800) of Division 12 may adopt building standards relating to fire and panic safety that are more stringent than those building standards adopted by the State Fire Marshal and contained in the California Building Standards Code. For these purposes, the district board shall be deemed a legislative body and the district shall be deemed a local agency. The adopted building standards shall be reasonably necessary because of local climatic, geological, or topographical conditions. Before adopting the ordinance, the district shall make an express finding that the ordinance is reasonably necessary because of local climatic, geological, or topographical conditions. The findings shall be available as a public record.

(b) Any fire protection district that proposes to adopt an ordinance pursuant to this section shall, not less than 30 days prior

to noticing a proposed ordinance for public hearing, provide a copy of that ordinance, together with the adopted findings made pursuant to subdivision (a), to the city, county, or city and county where the ordinance will apply. The city, county, or city and county, may provide the district with written comments, which shall become part of the fire protection district's public hearing record.

(c) The fire protection district shall transmit the adopted ordinance to the city, county, or city and county where the ordinance will apply. The legislative body of the city, county, or city and county, may ratify, modify, or deny an adopted ordinance and transmit its determination to the district within 15 days of the determination. Any modification or denial of an adopted ordinance shall include a written statement describing the reasons for any modifications or denial. No ordinance adopted by the district shall be effective until ratification by the city, county, or city and county where the ordinance will apply. Upon ratification of an adopted ordinance, the city, county, or city and county, shall file a copy of the findings of the district, and any findings of the city, county, or city and county, together with the adopted ordinance expressly marked and identified to which each finding refers, with the Department of Housing and Community Development.

(d) Nothing in this section shall authorize a district to mandate, nor prohibit a district from mandating, the installation of residential fire sprinkler systems within newly constructed dwelling units or in new additions to existing dwelling units, including, but not limited to, manufactured homes as defined in Section 18007.

(e) Nothing in this section shall authorize a district to mandate, nor prohibit a district from mandating, the retrofitting of existing dwelling units for the installation of residential fire sprinkler systems, including, but not limited to, manufactured homes as defined in Section 18007.

(f) Nothing in this section shall apply in any manner to litigation filed prior to January 1, 1991, regarding an ordinance or regulation which mandates the installation of residential fire sprinkler systems within newly constructed dwelling units or in new additions to existing dwelling units.

(g) This section shall not apply to fire and panic safety requirements for the public schools adopted by the State Fire Marshal pursuant to Section 13143.

(h) The same agency or entity to whom authority to enforce building standards not related to fire and panic safety is delegated by the city, county, or city and county with jurisdiction in the area affected by the building standard shall enforce any building standard adopted pursuant to this section.

SEC. 6. Section 17920.7 of the Health and Safety Code is repealed.

SEC. 7. Section 17958.5 of the Health and Safety Code is amended to read:

17958.5. (a) Except as provided in Section 17922.6, in adopting the ordinances or regulations pursuant to Section 17958, a city or

county may make such changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 as it determines, pursuant to the provisions of Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions.

For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions.

(b) On or before October 1, 1991, and each October 1 thereafter, the department, in conjunction with the office of the State Fire Marshal, shall transmit a report to the State Building Standards Commission on the modifications and changes made by cities and counties to the building standards published in the California Building Standards Code, and on the more stringent requirements adopted by a city, county, or city and county pursuant to Section 13143.5, or adopted by a fire protection district and ratified pursuant to Section 13869.7, to the building standards relating to fire and panic safety adopted by the State Fire Marshal and contained in the California Building Standards Code. The report shall be for informational purposes only and shall include a summary by the department and the office of the reasons cited as the necessity for the modifications, changes, and more stringent fire and panic safety requirements. The report required pursuant to this section shall apply to modifications, changes, and more stringent fire and panic safety requirements adopted or ratified on or after January 1, 1991.

SEC. 8. This act shall not become operative unless Assembly Bill 2666 of the 1989–90 Regular Session is chaptered.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs. 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 1084

An act to amend Section 1095 of the Unemployment Insurance Code, relating to disclosure of information.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. The Legislature finds and declares that county probation departments need access to Employment Development Department information in order to do all of the following:

(a) Facilitate the efforts of a county probation department to locate victims of crime on whose behalf restitution payments could, or already have been, collected.

(b) Assist a county probation department in verifying client incomes when assessing the client's ability to make payments toward financial obligations they may have incurred.

(c) Assist a county probation department in the location of probationers who abscond and fail to meet the financial requirements of probation including payment of fines or penalties.

SEC. 2. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the State Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of

general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses

information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 23910.3 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and

title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To provide county probation departments with wage and claim information in its possession that will assist those departments in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county or the state by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. The county shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

SEC. 2. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the State Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an

investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 23910.3 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the

executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(r) To provide county probation departments with wage and claim information in its possession that will assist those departments in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county or the state by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. The county shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

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. However, no reimbursement is required by subdivision (q) of Section 1095 of the Unemployment Insurance Code contained in Section 2 of 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 that provision creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 4. Section 2 of this bill incorporates amendments to Section 1095 of the Unemployment Insurance Code proposed by both this bill and AB 3092. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 1095 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 3092, in which case Section 1 of this bill shall not become operative.

CHAPTER 1085

An act to amend Sections 6106 and 6106.2 of the Commercial Code, relating to bulk transfers.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 6106 of the Commercial Code is amended to read:

6106. (1) This section applies only to a bulk transfer where the consideration is less than one million dollars ($1,000,000) and is substantially all cash or an obligation of the transferee to pay cash in the future to the transferor or a combination thereof.

(2) Upon every bulk transfer subject to this section except one made by sale at auction it is the duty of the transferee (or, if the transaction is handled through an escrow, the escrow agent) to apply the consideration in accordance with the provisions of this section so far as necessary to pay those debts of the transferor for which claims

are due and payable on or before the noticed sale date and are filed in writing on or prior to the date specified as the last date to file claims with the person designated in the notice to receive claims. This duty of the transferee or escrow agent runs to each creditor timely filing such a claim.

(3) If the transferor disputes whether a claim is due and payable on the noticed sale date or the amount of any claim, the transferee or escrow agent shall withhold from distribution an amount equal to (i) 125 percent of the first seven thousand five hundred dollars ($7,500) of the claim, and (ii) an amount equal to that portion of the claim in excess of the first seven thousand five hundred dollars ($7,500), or the pro rata amount under subdivision (2) of Section 6106.1, if applicable and shall send a written notice to the claimant filing the claim on or before two business days after the distribution that the amount will be paid to the transferor (or to the other claimants in accordance with subdivision (2) of Section 6106.1, as the case may be) unless attached within 25 days from the mailing of the notice. Any portion of the amount withheld which is not attached by the claimant within such time shall be paid by the transferee or escrow agent to the transferor (or to the other claimants in accordance with subdivision (2) of Section 6106.1 if they have not been paid in full). An attachment of any amount so withheld shall be limited in its effect to the amount withheld for the attaching claimant and shall give the attaching claimant no greater priority or rights with respect to his or her claim than the claimant would have had if the claim had not been disputed. For purposes of this subdivision, a claimant may obtain the issuance of an attachment for a claim which is less than five hundred dollars ($500) and which otherwise meets the requirements of Section 483.010 of the Code of Civil Procedure or which is a secured claim or lien of the type described in Section 483.010 of the Code of Civil Procedure. The remedy in this subdivision shall be in addition to any other remedies the claimant may have, including any right to attach the property intended to be transferred or any other property.

(4) If the cash consideration payable is not sufficient to pay all of the claims filed in full, where no escrow has been established pursuant to Section 6106.1 the transferee shall follow the procedures specified in subdivisions (1) through (3) of Section 6106.1.

(5) The transferee or escrow agent, as the case may be, shall within 45 days after the transferee takes legal title to any of the goods either pay to the extent of the cash consideration the claims filed and not disputed (or the applicable portion thereof to the extent of the cash consideration under subdivision (2) of Section 6106.1) or institute an action in interpleader pursuant to subdivision (b) of Section 386 of the Code of Civil Procedure and deposit the consideration with the clerk of the court pursuant to subdivision (c) of that section. Such action shall be brought in the appropriate court for the county where the transferor had its principal place of business in this state. Sections 386.1 and 386.6 of the Code of Civil Procedure

shall apply in such action.

(6) The notice shall state, in addition to the matters required by Section 6107, the name and address of the person with whom claims may be filed and the last date for filing claims, which shall be the business day before the noticed sale date. Claims shall be deemed timely filed only if actually received by the person designated in the notice to receive claims before the close of business on the day specified in the notice as the last date for filing claims.

(7) Nothing contained in this section shall release any security interest or other lien on the property which is the subject of the bulk transfer except upon the voluntary release thereof by the secured party or lienholder.

SEC. 2. Section 6106.2 of the Commercial Code, as added by Assembly Bill 3653, is amended to read:

6106.2. (a) This section applies only to a bulk sale where the consideration is substantially all cash or an obligation of the buyer to pay cash in the future to the seller or a combination thereof.

(b) Upon every bulk sale subject to this section except one made by sale at auction or a sale or series of sales conducted by a liquidator on the seller's behalf, it is the duty of the buyer or, if the transaction is handled through an escrow, the escrow agent to apply the cash consideration in accordance with this section so far as necessary to pay those debts of the seller for which claims are due and payable on or before the date of the bulk sale and are received in writing on or prior to the date specified as the last date to file claims with the person designated in the notice to receive claims. This duty of the buyer or escrow agent runs to each claimant timely filing the claim.

(c) If the seller disputes whether a claim is due and payable on the date of the bulk sale or the amount of any claim, the buyer or escrow agent shall withhold from distribution an amount equal to (1) 125 percent of the first seven thousand five hundred dollars ($7,500) of the claim, and (2) an amount equal to that portion of the claim in excess of the first seven thousand five hundred dollars ($7,500), or the pro rata amount under subdivision (b) of Section 6106.4, if applicable, and shall send a written notice to the claimant filing the claim on or before two business days after the distribution that the amount will be paid to the seller, or to the other claimants in accordance with subdivision (b) of Section 6106.4, as the case may be, unless attached within 25 days from the mailing of the notice. Any portion of the amount withheld which is not attached by the claimant within that time shall be paid by the buyer or escrow agent to the seller, or to the other claimants in accordance with subdivision (b) of Section 6106.4 if they have not been paid in full. An attachment of any amount so withheld shall be limited in its effect to the amount withheld for the attaching claimant and shall give the attaching claimant no greater priority or rights with respect to his or her claim than the claimant would have had if the claim had not been disputed. For purposes of this subdivision, a claimant may obtain the issuance of an attachment for a claim which is less than five hundred dollars

($500) and which otherwise meets the requirements of Section 483.010 of the Code of Civil Procedure or which is a secured claim or lien of the type described in Section 483.010 of the Code of Civil Procedure. The remedy in this subdivision shall be in addition to any other remedies the claimant may have, including any right to attach the property intended to be transferred or any other property.

(d) If the cash consideration payable is not sufficient to pay all of the claims received in full, where no escrow has been established pursuant to Section 6106.4, the buyer shall follow the procedures specified in subdivisions (a) to (c), inclusive, of Section 6106.4, and the immunity established by paragraph (3) of subdivision (a) of that section shall apply to the buyer.

(e) The buyer or escrow agent shall, within 45 days after the buyer takes legal title to any of the goods, either pay to the extent of the cash consideration the claims filed and not disputed, or the applicable portion thereof to the extent of the cash consideration under subdivision (b) of Section 6106.4, or institute an action in interpleader pursuant to subdivision (b) of Section 386 of the Code of Civil Procedure and deposit the consideration with the clerk of the court pursuant to subdivision (c) of that section. The action shall be brought in the appropriate court in the county where the transferor had its principal place of business in this state. Sections 386.1 and 386.6 of the Code of Civil Procedure shall apply in the action.

(f) The notice shall state, in addition to the matters required by Section 6105, the name and address of the person with whom claims may be filed and the last date for receiving claims, which shall be the business day before the anticipated date of the bulk sale (paragraph (4) of subdivision (a) of Section 6105). Claims shall be deemed timely filed only if actually received by the person designated in the notice to receive claims before the close of business on the day specified in the notice as the last day for filing claims.

(g) This section shall not be construed to release any security interest or other lien on the property which is the subject of the bulk sale except upon a voluntary release by the secured party or lienholder.

SEC. 3. Section 2 of this bill incorporates changes proposed by Assembly Bill No. 3653 in Section 6106.2 of the Commercial Code. It shall become operative only if this bill and AB 3653 are both enacted, and this bill is enacted last, in which case Section 1 of this bill shall not become operative, and the repeal of Section 6106 of the Commercial Code proposed by AB 3653 shall prevail over Section 1 of this bill.

CHAPTER 1086

An act to amend Sections 4980.02, 4980.43, and 4980.50 of the Business and Professions Code, relating to marriage, family, and child counselors.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 4980.02 of the Business and Professions Code is amended to read:

4980.02. For the purposes of this chapter, the practice of marriage, family, and child counseling shall mean that service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. This practice includes relationship and premarriage counseling.

The applications of marriage, family, and child counseling principles and methods includes, but is not limited to, the use of applied pyschotherapeutic techniques, to enable individuals to mature and grow within marriage and the family, and the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships.

SEC. 2. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) For all applicants, a minimum of two calendar years of supervised experience is required, which experience shall consist of 3,000 hours obtained over a period of not less than 104 weeks. Not less than 1,500 hours of experience shall be gained subsequent to the granting of the qualifying master's or doctor's degree. No hours of experience may be gained prior to becoming a trainee. All experience shall be gained within the six years immediately preceding the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(b) Experience as specified in Section 4980.40 may be gained as a trainee in the following settings: a governmental entity, a school, college, or university, a nonprofit and charitable corporation, or a licensed health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code, if the experience is gained by the trainee solely as part of the position for which he or she is employed.

(c) Experience as specified in Section 4980.40 may be gained as an intern as specified in subdivision (b) of this section, or when employed in a private practice owned by a licensed marriage, family, and child counselor, a licensed psychologist, a licensed clinical social

worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions. Employment in a private practice setting shall not commence until the applicant has been registered as an intern. When an intern is employed in a private practice setting by any licensee enumerated in this section, or by a professional corporation of any such licensees, the intern shall be under the direct supervision of a licensee enumerated in subdivision (f) of Section 4980.40 who shall be employed by and practice at the same site as the intern's employer. An intern employed in a private practice setting shall not pay his or her employer for supervision and shall receive fair remuneration from his or her employer.

(d) All interns shall register with the board in order to be credited for postdegree hours of experience gained toward licensure, regardless of the setting where those hours are to be gained. Except as provided in subdivision (e), all postdegree hours shall be gained as a registered intern.

(e) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration, within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(f) Trainees and interns shall not receive any remuneration from patients or clients, and shall only be paid by their employer.

(g) Trainees and interns shall only perform services at the place where their employer regularly conducts business, and shall have no proprietary interest in that business.

SEC. 3. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. Every applicant who meets the educational and experience requirements and applies for a license as a marriage, family, and child counselor shall be examined by the board. The examinations shall be as set forth in subdivision (g) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct which would constitute grounds to deny licensure.

The board shall not deny any applicant, whose application for licensure is complete, admission to the written examination, nor shall the board postpone or delay any applicant's written examination or delay informing the candidate of the results of any written examination, solely upon the receipt by the board of a complaint alleging acts or conduct which would constitute grounds to deny

licensure.

When an applicant for examination who has passed the written examination is the subject of a complaint or is under board investigation for acts or conduct which, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the oral examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

Notwithstanding Section 135, the board may deny any applicant who has previously failed either the written or oral examination permission to retake either examination pending completion of the investigation of any complaints against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Sections 11503 and 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485 of the Business and Professions Code.

The board shall retain all written examinations for at least one year following the date of the examinations. The board shall keep an accurate record of all oral examinations for at least one year following the date of the examinations.

An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage, family, and child counselor in the form that the board may deem appropriate.

CHAPTER 1087

An act to amend Sections 2601, 2602, 2603, 2604, 2605, 2607, 2609, 2612, 2614, 2615, 2632, 2637, 2652, 2655, 2655.4, 2660, 2661, 2680, 2682, 2684, 2685, 2690, and 4227 of, and to add Article 5.5 (commencing with Section 2662) to Chapter 5.7 of Division 2 of, the Business and Professions Code, relating to physical therapy, and making an appropriation therefor.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 2601 of the Business and Professions Code is amended to read:

2601. "Committee" as used in this chapter means the Physical Therapy Examining Committee of California.

SEC. 2. Section 2602 of the Business and Professions Code is amended to read:

2602. There is hereby created within the jurisdiction of the Medical Board of California, a Physical Therapy Examining Committee of California, hereinafter referred to as the committee. The committee shall enforce and administer this chapter.

SEC. 3. Section 2603 of the Business and Professions Code is amended to read:

2603. The members of the committee consist of the following: three physical therapists who shall have practiced physical therapy for five years and shall be licensed by the committee and three public members who shall not be licentiates of the committee or of any other board under the Medical Board of California or of any board referred to in Sections 1000 and 3600.

SEC. 4. Section 2604 of the Business and Professions Code is amended to read:

2604. The members of the committee shall be appointed for a term of four years, expiring on the first day of June of each year.

The Governor shall appoint one of the public members and the three physical therapist members of the committee qualified as provided in Section 2603. 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.

Not more than one member of the committee shall be appointed from the full-time faculty of any university, college, or other educational institution.

No person may serve as a member of the committee for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired term. Annually the committee shall elect one of its members as chairman.

The appointing power shall have the power to remove any member of the committee from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

SEC. 5. Section 2605 of the Business and Professions Code is amended to read:

2605. It shall be the duty of the committee to examine applicants for a license as provided by this chapter, at such places and at such times as shall be designated by the committee in its discretion. It may employ physical therapists licensed pursuant to this chapter to aid it in that examination. The examination shall reasonably test the applicant's knowledge of physical therapy in areas such as: anatomy, pathology, kinesiology, physiology, psychology, physics, electrotherapy, radiation therapy, hydrotherapy, massage, therapeutic exercise, physical therapy as applied to medicine, neurology, orthopedics, surgery, psychiatry, procedures of evaluation, testing, measuring, and technical procedures in the practice of physical therapy, consultation, and program planning.

SEC. 6. Section 2607 of the Business and Professions Code is

amended to read:

2607. The committee may employ, subject to law, such clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary tocarry out its powers and duties.

The committee may as necessary select and contract with physical therapy consultants who are licensed physical therapists to assist it in its programs on an intermittent basis. Notwithstanding any other provision of law, the committee may contract with these consultants on a sole source basis. For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any consultant under contract with the committee shall be considered a public employee.

SEC. 7. Section 2609 of the Business and Professions Code is amended to read:

2609. The committee shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

SEC. 8. Section 2612 of the Business and Professions Code is amended to read:

2612. Notice of each meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of the Government Code).

SEC. 9. Section 2614 of the Business and Professions Code is amended to read:

2614. (a) The committee shall hear all matters, including but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Except as otherwise provided in this chapter, all hearings 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. If a contested case is heard by the committee the hearing officer who presided at the hearing shall be present during the committee's consideration of the case and, if requested, shall assist and advise the committee.

(b) At the conclusion of the hearing, the committee shall deny an application for, or suspend or revoke, or impose probation conditions upon, a license or approval.

SEC. 10. Section 2615 of the Business and Professions Code is amended to read:

2615. The committee shall from time to time adopt regulations that may be necessary to effectuate this chapter. In adopting regulations the committee shall comply with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 11. Section 2632 of the Business and Professions Code is amended to read:

2632. All licenses for the practice of physical therapy in this state shall be issued by the committee, and all applications for the licenses shall be filed with the committee. Excepting as otherwise required

by the director pursuant to Section 164, the license issued by the committee shall describe the licensee as a "physical therapist licensed by the Physical Therapy Examining Committee of California."

Each application shall be accompanied by the application fee prescribed by Section 2688, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a license without examination or to take an examination.

SEC. 12. Section 2637 of the Business and Professions Code is amended to read:

2637. Every applicant who is otherwise qualified as provided in this chapter and who receives a passing grade as established by the committee on the examination shall be granted a license.

SEC. 13. Section 2652 of the Business and Professions Code is amended to read:

2652. All schools, whether situated in this state or not, furnishing courses of study meeting the minimum standard required by Sections 2650 and 2651 and the regulations of the committee adopted pursuant to this chapter shall be approved by the committee and shall be entitled to compel this approval, if it is denied, by action in the Superior Court of the State of California, the procedure and power of the court in which action shall be the same as provided in Section 2087.

SEC. 14. Section 2655 of the Business and Professions Code is amended to read:

2655. As used in this article:

(a) "Physical therapist" means a registered physical therapist licensed by the committee.

(b) "Physical therapist assistant" means a person who meets the qualifications stated in Section 2655.3 and who is approved by the committee to assist in the provision of physical therapy under the supervision of a physical therapist who shall be responsible for the extent, kind, and quality of the services provided by the physical therapist assistant.

(c) "Physical therapist assistant" and "physical therapy assistant" shall be deemed identical and interchangeable.

SEC. 15. Section 2655.4 of the Business and Professions Code is amended to read:

2655.4. The examination for approval as a physical therapist assistant shall be given under the direction of the committee. The examination shall be in writing and shall be conducted by such persons and in such manner and under such regulations as shall be prescribed by the committee, but shall be so conducted that the identity of each applicant taking an examination will be unknown to all of the examiners until all of the papers have been graded.

SEC. 16. Section 2660 of the Business and Professions Code is amended to read:

2660. The committee may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for

not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(h) Gross negligence in his or her practice as a physical therapist.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(*l*) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.

SEC. 17. Section 2661 of the Business and Professions Code is amended to read:

2661. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The committee may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 18. Article 5.5 (commencing with Section 2662) is added to Chapter 5.7 of Division 2 of the Business and Professions Code, to read:

Article 5.5. Diversion Program

2662. It is the intent of the Legislature that the committee shall seek ways and means to identify and rehabilitate physical therapists and physical therapist assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of physical therapy in a manner which will not endanger the public health and safety.

2663. (a) The committee shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The committee may contract with any other state agency or a private organization to perform its duties under this article. The committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article.

2664. (a) Any diversion evaluation committee established by the committee shall have at least three members. In making appointments to a diversion evaluation committee, the committee shall consider the appointment of persons who are either recovering from substance abuse and have been free from substance abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The committee also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a diversion evaluation committee shall be by the affirmative vote of a majority of members appointed to the committee. Each appointment shall be at the pleasure of the committee for a term not to exceed four years. In its discretion, the committee may stagger the terms of the initial members so appointed.

(c) A majority of the members of a diversion evaluation committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each diversion evaluation committee shall elect from its membership a chairperson and a vice chairperson. Notwithstanding the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code), relating to public meetings, a diversion evaluation committee may convene in closed session to consider matters relating to any physical therapist or physical therapist assistant applying for or participating in a diversion program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A diversion evaluation committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a diversion evaluation committee shall receive a per diem and shall be reimbursed for expenses as provided

in Section 103.

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) The evaluation of physical therapists and physical therapist assistants who request participation in the program and the consideration of any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) The review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) The receipt and review of information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the committee.

(e) The consideration of whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) Setting forth in writing a treatment program for each participant in the diversion program with requirements for supervision and surveillance.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No committee or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the committee and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may effect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the committee its designee, or a diversion evaluation committee, as the case may be, determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the committee and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the committee. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the committee may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

2667. All committee and diversion evaluation committee records and records of proceedings and participation of a physical therapist or physical therapist assistant in a program shall be confidential and

are not subject to discovery or subpoena.

2668. (a) A fee not to exceed one hundred dollars ($100) may be charged for participation in the program.

(b) If the committee contracts with any other entity to carry out this section, the executive officer of the committee, or his or her designee, shall review the activities and performance of the contractor on a biennial basis. As part of this review, the committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

2669. Participation in a diversion program shall not be a defense to any disciplinary action which may be taken by the committee. This section does not preclude the committee from commencing disciplinary action against a physical therapist or physical therapist assistant who is terminated unsuccessfully from the program under this section. That disciplinary action may not include as evidence any confidential information.

SEC. 19. Section 2680 of the Business and Professions Code is amended to read:

2680. The committee shall keep a record of its proceedings under this chapter, and a register of all persons licensed under it. The register shall show the name of every living licensee, his or her last known place of residence, and the date and number of his or her license as a physical therapist. The committee shall compile a list of physical therapists authorized to practice physical therapy in the state. Any interested person is entitled to obtain a copy of that list upon application to the committee and payment of such amount as may be fixed by the committee which amount shall not exceed the cost of the list so furnished.

SEC. 20. Section 2682 of the Business and Professions Code is amended to read:

2682. There is in the State Treasury the Physical Therapy Fund. All collections from persons licensed or approved or seeking to be licensed or approved shall be paid by the committee into the fund after reporting to the Controller at the beginning of each month the amount and source of the collections. All money in the Physical Therapy Fund is appropriated to carry out the purposes of this chapter.

SEC. 21. Section 2684 of the Business and Professions Code is amended to read:

2684. (a) Notwithstanding Section 2422, any license or approval for the practice of physical therapy shall expire at 12 midnight on the last day of the birth month of the licensee or holder of an approval during the second year of a two-year term, if not renewed.

(b) To renew an unexpired license or approval, the licensee or the holder of an approval shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the committee and pay the prescribed renewal fee.

SEC. 22. Section 2685 of the Business and Professions Code is amended to read:

2685. At least 60 days before the expiration of any license or approval, the committee shall mail to each licensee under this chapter, at the latest address furnished by the licensee to the executive officer, a notice stating the amount of the renewal fee and the date on which it is due, and that failure to pay it on or before the due date will result in expiration of the license.

SEC. 23. Section 2690 of the Business and Professions Code is amended to read:

2690. A physical therapy 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 physical therapists 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 such corporation and the conduct of its affairs.

With respect to a physical therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Physical Therapy Examining Committee of California.

SEC. 24. Section 4227 of the Business and Professions Code is amended to read:

4227. (a) No person shall furnish any dangerous drug or device except upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(b) This section shall not apply to the furnishing of any dangerous drug or device by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, podiatrist, or veterinarian, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device and its quantity.

(c) A registered pharmacist, or a person exempted pursuant to Section 4050.7, may distribute dangerous drugs and devices directly to hemodialysis patients pursuant to regulations promulgated by the board. The board shall promulgate such regulations as are necessary to ensure the safe distribution of such drugs and devices to hemodialysis patients without interruption of supply including, but not limited to, the following: vendor licensing, records and labeling, patient receipts, patient training, report records, specific product and quantity limitations, verification order forms, reports and supplies, adequate establishment facilities, and reports to the board. A person who violates a regulation promulgated pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties which may be imposed pursuant to Sections 4389 and 4350.5. If the board finds any hemodialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or

all of such drugs or devices distributed to individual patients.

(d) Home hemodialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a renal dialysis center accredited by the State Department of Health Services. The physician and surgeon prescribing the hemodialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed such program.

(e) A registered pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist or may furnish a topical pharmaceutical agent authorized for use pursuant to subdivision (e) of Section 3041 to an optometrist. A record containing the date, name and address of the buyer, and name and quantity of the drug shall be maintained. This subdivision shall not be construed to authorize the furnishing of a controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(f) A medical device retailer shall dispense, furnish, transfer, or sell a dangerous device only to another medical device retailer, a pharmacy, a licensed physician and surgeon, a licensed health care facility, or a patient or his or her personal representative.

(g) A registered pharmacist may furnish electroneuromyographic needle electrodes or hypodermic needles used for the purpose of placing wire electrodes for kinesiological electromyographic testing to physical therapists who are certified by the Physical Therapy Examining Committee of California to perform tissue penetration in accordance with Section 2620.5.

CHAPTER 1088

An act to amend Sections 15611, 15612, 15624, 15632, 15652, 15666, and 15672 of, to add Article 7.5 (commencing with Section 15678.1) and Article 7.6 (commencing with Section 15679.1) to Chapter 3 of Title 2 of, and to add Section 15699 to, the Corporations Code, and to amend Section 12214 of the Government Code, relating to limited partnerships.

[Approved by Governor September 18, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 15611 of the Corporations Code is amended to read:

15611. As used in this chapter, unless the context otherwise requires:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Capital account" of a partner, unless otherwise provided in the partnership agreement, means the amount of the capital interest of that partner in the partnership consisting of that partner's original contribution, as (1) increased by any additional contributions and by that partner's share of the partnership's profits and (2) decreased by any distribution to that partner and by that partner's share of the partnership's losses.

(c) "Certificate of limited partnership" or "certificate" means the certificate referred to in Section 15621, including all amendments thereto.

(d) "Constituent limited partnership" means a limited partnership which is merged with one or more other limited partnerships and includes the surviving limited partnership.

(e) "Contribution" means any money, property or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this chapter, which a partner contributes to a limited partnership as capital in that partner's capacity as a partner pursuant to an agreement between the partners, including an agreement as to value.

(f) "Disappearing limited partnership" means a constituent limited partnership which is not the surviving limited partnership.

(g) "Distribution" means the transfer of money or property by a partnership to its partners without consideration.

(h) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners (or their equivalents under any name).

(i) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or a person who has been admitted as a general partner pursuant to Section 15641.

(j) "Interests of limited partners" means the aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from business operations of the partnership.

(k) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement, or an assignee of a limited partnership

interest who has become a limited partner pursuant to Section 15674, or, to the extent provided in subdivision (b) of Section 15662, a former general partner who has ceased to be a general partner.

(*l*) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(m) "Mail," unless otherwise provided in the partnership agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(n) "Majority-in-interest of the limited partners," unless otherwise provided in the partnership agreement, means more than 50 percent of the interests of limited partners.

(o) "Parent" of a specified limited partnership means each general partner of the limited partnership, each person possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of a general partner of the limited partnership, and a person owning, directly or indirectly, limited partnership interests possessing more than 50 percent of the aggregate voting power of the specified limited partnership.

(p) "Partner" means a limited or general partner. "Partner of record" means a partner named as a partner on the list maintained in accordance with subdivision (a) of Section 15615.

(q) "Partnership agreement" means any valid agreement of the partners as to the affairs of a limited partnership and the conduct of its business, including all amendments thereto.

(r) "Person" means an individual, partnership, limited partnership (domestic or foreign), trust, estate, association, corporation, or other entity.

(s) "Proxy" means a written authorization signed by a partner or the partner's attorney-in-fact giving another person the power to vote with respect to the interest of that partner. "Signed," for the purpose of this section, means the placing of the partner's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the partner or partner's attorney-in-fact.

(t) "Return of capital," unless otherwise provided in the partnership agreement, means any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contributions to the partnership as reduced by prior distributions which were a return of capital.

(u) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(v) "Surviving limited partnership" means a limited partnership into which one or more other limited partnerships are merged.

(w) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice to a partner or the limited

partnership is deposited in the United States mails; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(x) (1) "Transact intrastate business" means entering into repeated and successive transactions of business in this state, other than interstate or foreign commerce.

(2) A foreign limited partnership shall not be considered to be transacting intrastate business merely because it is a limited partner of a foreign limited partnership transacting intrastate business or because it is a limited partner of a domestic limited partnership.

(3) Without excluding other activities which may not constitute transacting intrastate business, a foreign limited partnership shall not be considered to be transacting intrastate business within the meaning of paragraph (1) solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims and disputes.

(B) Holding meetings of its partners or carrying on other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositaries with relation to its securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(G) Creating evidences of debt or mortgages, liens, or security interests on, real or personal property.

(H) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

SEC. 2. Section 15612 of the Corporations Code is amended to read:

15612. The name of each limited partnership as set forth in its certificate of limited partnership:

(a) Shall contain the words "limited partnership" or the abbreviation "L.P." at the end of its name.

(b) May contain the name of a limited partner.

(c) May not be a name which the Secretary of State determines is likely to mislead the public and may not be the same as, or resemble so closely as to tend to deceive (1) a name which is under reservation for another limited partnership pursuant to Section

15613 or (2) the name of any limited partnership which has previously filed a certificate pursuant to Section 15621 or of a foreign limited partnership registered pursuant to Section 15692, except that a limited partnership may adopt a name that is substantially the same as that of an existing domestic limited partnership or foreign limited partnership which is registered pursuant to Section 15692, upon proof of consent by such domestic limited partnership or foreign limited partnership and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

(d) May not contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp.".

(e) The use by a limited partnership or a foreign limited partnership of a name in violation of this section may be enjoined notwithstanding the filing of its certificate of limited partnership or its registration with the Secretary of State.

SEC. 3. Section 15624 of the Corporations Code is amended to read:

15624. (a) Each certificate required by this article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) A certificate referred to in Section 15621 shall be executed by all general partners, unless filed by a limited partner pursuant to Section 15633.

(2) A certificate of amendment shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership) and by each general partner designated in the certificate as a new partner, provided that if the amendment states the cessation of a general partner to be a general partner, it need not be signed by that former general partner if it is signed as otherwise required in this paragraph or in Section 15625.

(3) A certificate of dissolution shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership).

(4) A certificate of cancellation of certificate of limited partnership shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership).

(5) A certificate of continuation shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership).

(6) A certificate of merger shall be executed by all general partners of each domestic constituent limited partnership (or a lesser number as provided in the certificate of limited partnership of the constituent limited partnership) and by one or more general partners of each foreign constituent limited partnership.

(7) A certificate filed by a limited partner pursuant to Section 15633 shall be signed by the limited partner.

(b) Any person may execute any certificate referred to in this section by an attorney-in-fact.

SEC. 4. Section 15632 of the Corporations Code is amended to

read:

15632. (a) A limited partner is not liable for any obligation of a limited partnership unless named as a general partner in the certificate or, in addition to the exercise of the rights and powers of a limited partner, the limited partner participates in the control of the business. If a limited partner participates in the control of the business without being named as a general partner, that partner may be held liable as a general partner only to persons who transact business with the limited partnership with actual knowledge of that partner's participation in control and with a reasonable belief that the partner is a general partner at the time of the transaction. Nothing in this chapter shall be construed to affect the liability of a limited partner to third parties for the limited partner's participation in tortious conduct.

(b) A limited partner does not participate in the control of the business within the meaning of subdivision (a) solely by doing one or more of the following:

(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner.

(2) Consulting with and advising a general partner with respect to the business of the limited partnership.

(3) Acting as surety for the limited partnership or guaranteeing one or more specific debts of the limited partnership.

(4) Approving or disapproving an amendment to the partnership agreement.

(5) Voting on or calling a meeting of the partners for one or more of the following matters:

(A) The dissolution and winding up of the limited partnership.

(B) The merger of the limited partnership or sale, exchange, lease, mortgage, pledge, or other transfer of all or a substantial part of the assets of the limited partnership other than in the ordinary course of its business.

(C) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.

(D) A change in the nature of the business.

(E) Transactions in which the general partners have an actual or potential conflict of interest with the limited partners or the partnership.

(F) The removal of a general partner.

(G) An election to continue the business of the limited partnership other than under the circumstances described in subparagraph (I) or (J).

(H) The admission of a general partner other than under the circumstances described in subparagraph (I) or (J).

(I) The admission of a general partner or an election to continue the business of the limited partnership after a general partner ceases to be a general partner other than by removal where there is no remaining or surviving general partner.

(J) The admission of a general partner or an election to continue the business of the limited partnership after the removal of a general partner where there is no remaining or surviving general partner.

(K) Matters related to the business of the limited partnership not otherwise enumerated in this subdivision, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

(6) Winding up the partnership pursuant to Section 15683.

(7) Executing and filing a certificate pursuant to Section 15625 or a certificate of dissolution pursuant to paragraph (1) of subdivision (a) of Section 15623 or a certificate of cancellation of certificate of limited partnership pursuant to paragraph (1) of subdivision (b) of Section 15623.

(8) Serving on an audit committee or committee performing the functions of an audit committee.

(9) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subdivision.

(c) The enumeration in subdivision (b) does not mean that any other conduct or the possession or exercise of any other power by a limited partner constitutes participation by the limited partner in the control of the business of the limited partnership.

SEC. 5. Section 15652 of the Corporations Code is amended to read:

15652. Notwithstanding the compromise of a claim referred to in subdivision (c) of Section 15636, a person whose claim against a limited partnership arises before the receipt of notice of the compromise may enforce the original obligation of a partner to make a contribution to the partnership or to return a distribution to the partnership if the person had knowledge of the original obligation prior to the time the claim arose and if the compromise occurred after the time the claim arose. Any other person with a claim against a limited partnership may enforce only the existing obligation of a partner to make a contribution to the partnership or to return a distribution to the partnership. A person with a claim against a limited partnership may not enforce a conditional obligation of a limited partner unless the conditions have been satisfied or waived. Conditional obligations include, without limitation, a capital contribution payable upon a discretionary call of the partnership or a general partner prior to the time the call occurs. Nothing in this section shall be construed to affect the rights of third-party creditors of the partnership to seek equitable remedies nor any rights existing under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 6. Section 15666 of the Corporations Code is amended to read:

15666. (a) A partner is obligated to return a distribution from a limited partnership to the extent that (1) the partner had knowledge

of facts indicating the impropriety of the distribution, and (2) immediately after giving effect to the distribution, and notwithstanding the compromise of a claim referred to in subdivision (c) of Section 15636, all liabilities of the limited partnership, other than liabilities to partners on account of their interest in the limited partnership and liabilities as to which recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets, provided that the fair value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the partnership assets only to the extent that the fair value of the property exceeds this liability.

(b) A cause of action with respect to an obligation to return a distribution pursuant to subdivision (a) is extinguished unless the action is brought within four years after the distribution is made.

SEC. 7. Section 15672 of the Corporations Code is amended to read:

15672. Except as otherwise provided in the partnership agreement, a limited partnership interest is assignable in whole or in part. An assignment of a limited partnership interest does not dissolve a limited partnership or, other than as set forth in this chapter or in the partnership agreement, entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, the distributions and the allocations of income, gain, loss, deduction, credit, or similar item, to which the assignor would be entitled. Except as otherwise provided in the assignment, an assignee of a limited partnership interest in a limited partnership with over 100 limited partners also shall be entitled to all of the rights granted to a limited partner pursuant to Section 15634. A limited partner remains a partner upon assignment of all or part of the limited partner's limited partnership interest, with such rights as the assignee does not acquire or possess, subject to the assignee becoming a limited partner pursuant to subdivision (a) of Section 15674.

SEC. 8. Article 7.5 (commencing with Section 15678.1) is added to Chapter 3 of Title 2 of the Corporations Code, to read:

Article 7.5. Merger

15678.1. Two or more limited partnerships may be merged into one of such limited partnerships pursuant to this article.

15678.2. (a) Each limited partnership which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all general partners of each constituent limited partnership and the principal terms of the merger shall be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless otherwise provided in the partnership agreement of the constituent limited partnership. Other persons, including a parent of a constituent limited partnership, may be parties to the agreement of merger. The agreement of merger

shall state:

(1) The terms and conditions of the merger.

(2) The name of the surviving limited partnership, and of each disappearing limited partnership, and the agreement of merger may change the name of the surviving limited partnership, which new name may be the same as or similar to the name of a disappearing domestic or foreign limited partnership, subject to Section 15612.

(3) The manner of converting the partnership interests of each of the constituent limited partnerships into partnership interests or other securities of the surviving limited partnership and, if partnership interests of any of the constituent limited partnerships are not to be converted solely into partnership interests or other securities of the surviving limited partnership, the cash, property, rights, or securities which the holders of the partnership interests are to receive in exchange for the partnership interests, which cash, property, rights, or securities may be in addition to or in lieu of partnership interests or other securities of the surviving limited partnership.

(4) Such other details or provisions as are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) Each limited partnership interest of the same class of any constituent limited partnership (other than the cancellation of limited partnership interests held by a constituent limited partnership or its parent or a limited partnership of which the constituent limited partnership is a parent in another constituent limited partnership) shall, unless all limited partners of the class consent, be treated equally with respect to any distribution of cash, property, rights, or securities. Notwithstanding this subdivision (b), except in a merger of a limited partnership with a limited partnership in which it controls at least 90 percent of the limited partnership interests entitled to vote with respect to the merger, the nonredeemable limited partnership interests of a constituent limited partnership may be converted only into nonredeemable limited partnership interests of the surviving limited partnership or a parent if a constituent limited partnership or its parent owns, directly or indirectly, limited partnership interests of another constituent limited partnership representing more than 50 percent of the limited partnership interests entitled to vote with respect to the merger of the other constituent limited partnership prior to the merger, unless all of the limited partners of the class consent. This subdivision shall apply only to constituent limited partnerships with over 35 limited partners.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the certificate of merger if the amendment is approved by the general partners of each constituent limited partnership in the same manner as required for approval of the original agreement of merger and, if the amendment changes any of the principal terms of the agreement of merger, the

amendment is approved by the limited partners of each constituent limited partnership in the same manner and to the same extent as required for the approval of the original agreement of merger.

(d) The general partners of a limited partnership may, in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent limited partnerships, without further approval by the limited partnership interests, at any time before the merger is effective.

(e) The surviving limited partnership shall keep the agreement of merger at the office referred to in subdivision (a) of Section 15614, and, upon the request of a limited partner of a constituent limited partnership, the general partners of the surviving limited partnership shall promptly deliver to the limited partner, at the expense of the surviving limited partnership, a copy of the agreement of merger. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

15678.3. Subdivision (b) of Section 15678.2 shall not apply to any transaction if the commissioner has approved the terms and conditions of the transaction and the fairness of such terms and conditions pursuant to Section 25142.

15678.4. (a) After approval of a merger by the constituent limited partnerships, the constituent limited partnerships shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership) and by each foreign constituent limited partnership by one or more general partners. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers of each of the constituent limited partnerships, if any, separately identifying the disappearing limited partnerships and the surviving limited partnership.

(2) If a vote of the limited partners was required under Section 15678.2, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) Any change required to the information set forth in the certificate of limited partnership of the surviving limited partnership resulting from the merger, including any change in the name of the surviving limited partnership resulting from the merger. The filing of a certificate of merger setting forth any such changes to the certificate of limited partnership of the surviving limited partnership shall have the effect of the filing of a certificate of amendment by the surviving limited partnership, and the surviving limited partnership

need not file a certificate of amendment under Section 15622 to reflect such changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(b) A certificate of merger shall have the effect of the filing of a certificate of cancellation for each disappearing limited partnership, and no disappearing limited partnership need file a certificate of dissolution or a certificate of cancellation under Section 15623 as a result of the merger.

15678.5. (a) Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at such future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State.

(b) For all purposes, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent limited partnerships into the surviving limited partnership.

15678.6. (a) Upon a merger of limited partnerships pursuant to this chapter, the separate existence of the disappearing limited partnerships ceases and the surviving limited partnership shall succeed, without other transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of each of the disappearing limited partnerships and shall be subject to all the debts and liabilities of each in the same manner as if the surviving limited partnership had itself incurred them.

(b) All rights of creditors and all liens upon the property of each of the constituent limited partnerships shall be preserved unimpaired and may be enforced against the surviving limited partnership to the same extent as if the debt, liability or duty which gave rise to such lien had been incurred or contracted by it, provided that such liens upon the property of a disappearing limited partnership shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing limited partnership may be prosecuted to judgment, which shall bind the surviving limited partnership, or the surviving limited partnership may be proceeded against or be substituted in the disappearing limited partnership's place.

15678.7. (a) The merger of any number of domestic limited partnerships with any number of foreign limited partnerships may be effected if the foreign limited partnerships are authorized by the laws under which they are organized to effect such a merger.

(b) If the surviving limited partnership is a domestic limited partnership, the merger proceedings with respect to that limited partnership and any domestic disappearing limited partnership shall conform to the provisions of this chapter governing the merger of

domestic limited partnerships, but if the surviving limited partnership is a foreign limited partnership, then, subject to the requirements of subdivision (d) and Article 7.6 (commencing with Section 15679.1), the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited partnership.

(c) If the surviving limited partnership is a domestic limited partnership, a certificate of merger shall be filed as provided in Section 15678.4, and thereupon, subject to subdivision (a) of Section 15678.5, the merger shall be effective as to each domestic constituent limited partnership.

(d) If the surviving limited partnership is a foreign limited partnership, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving limited partnership is organized, but shall be effective as to any domestic disappearing limited partnership as of the time of effectiveness in such foreign jurisdiction upon the filing in this state of a certificate of merger as provided in Section 15678.4.

(e) If a merger described in subdivision (c) or (d) also includes a foreign disappearing limited partnership previously registered for the transaction of intrastate business in this state pursuant to Section 15692, the filing of the certificate of merger automatically has the effect of a cancellation of registration for that foreign limited partnership pursuant to Section 15696 without the necessity of the filing of a certificate of cancellation.

(f) The provisions of subdivision (b) of Section 15678.2 and Article 7.6 (commencing with Section 15679.1) apply to the rights of the limited partners of any of the constituent limited partnerships which are domestic limited partnerships and of any domestic limited partnership which is a parent of any foreign constituent limited partnership.

15678.8. Whenever a domestic or foreign limited partnership having any real property in this state merges with another limited partnership pursuant to the laws of this state or of the state or place in which any constituent limited partnership was organized, and the laws of the state or place of organization (including this state) of any disappearing limited partnership provide substantially that the making and filing of the agreement of merger or certificate of merger vests in the surviving limited partnership all the real property of any disappearing limited partnership, the filing for record in the office of the county recorder of any county in this state in which any of the real property of such disappearing limited partnership is located of either (a) a certificate of merger certified by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving limited partnership of all interest of such disappearing limited partnership in and to the real property located in that

county.

15678.9. Recording of the certificate of merger in accordance with Section 15678.8 shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

SEC. 9. Article 7.6 (commencing with Section 15679.1) is added to Chapter 3 of Title 2 of the Corporations Code, to read:

Article 7.6. Dissenting Limited Partners' Rights

15679.1. (a) For purposes of this article, "reorganization" refers to either of the following:

(1) A merger pursuant to Article 7.5 (commencing with Section 15678.1).

(2) The acquisition by one limited partnership in exchange in whole or part for its partnership interests (or the partnership interests or equity securities of a partnership or other entity that is in control of the acquiring limited partnership) of partnership interests of another limited partnership if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership.

(3) The acquisition by one limited partnership in exchange in whole or in part for its partnership interests (or the partnership interests or equity securities of a partnership or other entity which is in control of the acquiring limited partnership) or for its debts securities (or debt securities of a limited partnership or other entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership.

(b) For purposes of this article, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership.

15679.2. (a) If the approval of outstanding limited partnership interests is required for a limited partnership to participate in a reorganization, pursuant to the limited partnership agreement of the partnership, or otherwise, then each limited partner of the limited partnership holding such interests may, by complying with this article, require the limited partnership to purchase for cash, at its fair market value, the interest owned by the limited partner in the limited partnership, if such interest is a dissenting interest as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization, excluding any appreciation or depreciation in consequence of the proposed reorganization.

(b) As used in this article, "dissenting interest" means the interest of a limited partner that satisfies all of the following conditions:

(1) Either:

(A) The interest was not, immediately prior to the reorganization,

either (i) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100, or (ii) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, provided that in either such instance the limited partnership whose outstanding interests are so listed provides, in its notice to limited partners requesting their approval of the proposed reorganization, a summary of the provisions of this section and Sections 15679.3, 15679.4, 15679.5, and 15679.6.

(B) Demands for payment are filed with respect to 5 percent or more of the outstanding interests of any class of interests described in clause (i) or (ii) of subparagraph (A).

(2) Which was outstanding on the date for the determination of limited partners entitled to vote on the reorganization.

(3) (i) Which was not voted in favor of the reorganization, or (ii) if such interest is described in clause (i) or (ii) of subparagraph (A) of paragraph (1), was voted against the reorganization; provided, however, that clause (i) rather than clause (ii) of this paragraph applies in any case where the approval for the proposed reorganization is sought by written consent rather than at a meeting.

(4) Which the limited partner has demanded that the limited partnership purchase at its fair market value in accordance with Section 15679.3.

(5) Which the limited partner submits for endorsement, if applicable, in accordance with Section 15679.4.

(c) As used in this article, "dissenting limited partner" means the recordholder of a dissenting interest, and includes an assignee of record of such an interest.

15679.3. (a) If limited partners have a right under Section 15679.2, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, to require the limited partnership to purchase their limited partnership interests for cash, such limited partnership shall mail to each such limited partner a notice of the approval of the reorganization by the requisite vote or consent of the limited partners, within 10 days after the date of such approval, accompanied by a copy of this section and Sections 15679.2, 15679.4, 15679.5, and 15679.6, a statement of the price determined by the limited partnership to represent the fair market value of its outstanding interests, and a brief description of the procedure to be followed if the limited partner desires to exercise the limited partner's rights under such sections. The statement of price constitutes an offer by the limited partnership to purchase at the price stated any dissenting interests as defined in subdivision (b) of Section 15679.2, unless they lose their status as dissenting interests under Section 15679.11.

(b) Any limited partner who has a right to require the limited partnership to purchase the limited partner's interest for cash under Section 15679.2, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, and who desires the limited partnership

to purchase such interest, shall make written demand upon the limited partnership for the purchase of such interest and the payment to the limited partner in cash of its fair market value. The demand is not effective for any purpose unless it is received by the limited partnership or any transfer agent thereof (1) in the case of interests described in clause (i) or (ii) of subparagraph (A) of paragraph (1) of subdivision (b) of Section 15679.2, not later than the date of the limited partners' meeting to vote upon the reorganization, or (2) in any other case, within 30 days after the date on which notice of the approval of the reorganization by the requisite vote or consent of the limited partners is mailed by the limited partnership to the limited partners.

(c) The demand shall state the number or amount of the limited partner's interest in the limited partnership and shall contain a statement of what such limited partner claims to be the fair market value of that interest on the day before the announcement of the proposed reorganization. The statement of fair market value constitutes an offer by the limited partner to sell the interest at such price.

15679.4. Within 30 days after the date on which notice of the approval of the outstanding interests of the limited partnership is mailed to the limited partner pursuant to subdivision (a) of Section 15679.3, the limited partner shall submit to the limited partnership at its principal office or at the office of any transfer agent thereof, (a) if the interest is evidenced by a certificate, the limited partner's certificate representing the interest which the limited partner demands that the limited partnership purchase, to be stamped or endorsed with a statement that the interest is a dissenting interest or to be exchanged for certificates of appropriate denominations so stamped or endorsed, or (b) if the interest is not evidenced by a certificate, written notice of the number or amount of interest which the limited partner demands that the limited partnership purchase. Upon subsequent transfers of the dissenting interest on the books of the limited partnership, the new certificates or other written statement issued therefor shall bear a like statement, together with the name of the original holder of the dissenting interest.

15679.5. (a) If the limited partnership and the dissenting limited partner agree that such limited partner's interest is a dissenting interest and agree upon the price to be paid for the dissenting interest, the dissenting limited partner is entitled to the agreed price with interest thereon at the legal rate on judgments from the date of consummation of the reorganization. All agreements fixing the fair market value of any dissenting limited partner's interest as between the limited partnership and such limited partner shall be in writing and filed in the records of the limited partnership.

(b) Subject to the provisions of Section 15679.8, payment of the fair market value for a dissenting interest shall be made within 30 days after the amount thereof has been agreed or within 30 days after any statutory or contractual conditions to the reorganization are

satisfied, whichever is later, and in the case of dissenting interests evidenced by certificates of interest, subject to surrender of such certificates of interest, unless provided otherwise by agreement.

15679.6. (a) If the limited partnership denies that a limited partnership interest is a dissenting interest, or the limited partnership and a dissenting limited partner fail to agree upon the fair market value of a dissenting interest, then such limited partner or any interested limited partnership, within six months after the date on which notice of the approval of the reorganization by the requisite vote or consent of the limited partners was mailed to the limited partner, but not thereafter, may file a complaint in the superior court of the proper county praying the court to determine whether the interest is a dissenting interest, or the fair market value of the dissenting interest, or both, or may intervene in any action pending on such a complaint.

(b) Two or more dissenting limited partners may join as plaintiffs or be joined as defendants in any such action and two or more such actions may be consolidated.

(c) On the trial of the action, the court shall determine the issues. If the status of the limited partnership interest as a dissenting interest is in issue, the court shall first determine that issue. If the fair market value of the dissenting interest is in issue, the court shall determine, or shall appoint one or more impartial appraisers to determine, the fair market value of the dissenting interest.

15679.7. (a) If the court appoints an appraiser or appraisers, they shall proceed forthwith to determine the fair market value per interest of the outstanding limited partnership interests of the limited partnership, by class if necessary. Within the time fixed by the court, the appraisers, or a majority of them, shall make and file a report in the office of the clerk of the court. Thereupon, on the motion of any party, the report shall be submitted to the court and considered on such additional evidence as the court considers relevant. If the court finds the report reasonable, the court may confirm it.

(b) If a majority of the appraisers appointed fails to make and file a report within 30 days from the date of their appointment, or within such further time as may be allowed by the court, or the report is not confirmed by the court, the court shall determine the fair market value per interest of the outstanding limited partnership interests of the limited partnership, by class if necessary.

(c) Subject to Section 15679.8, judgment shall be rendered against the limited partnership for payment of an amount equal to the fair market value, as determined by the court, of each dissenting interest which any dissenting limited partner who is a party, or has intervened, is entitled to require the limited partnership to purchase, with interest thereon at the legal rate on judgments from the date of consummation of the reorganization.

(d) Any such judgment shall be payable forthwith, provided, however, that with respect to limited partnership interests

evidenced by transferable certificates of interest, only upon the endorsement and delivery to the limited partnership of those certificates representing the interests described in the judgment. Any party may appeal from the judgment.

(e) The costs of the action, including reasonable compensation for the appraisers, to be fixed by the court, shall be assessed or apportioned as the court considers equitable, but, if the appraisal exceeds the price offered by the limited partnership, the limited partnership shall pay the costs (including, in the discretion of the court, if the value awarded by the court for the dissenting interest is more than 125 percent of the price offered by the limited partnership under subdivision (a) of Section 15679.3, attorneys' fees and fees of expert witnesses).

15679.8. To the extent that the payment to dissenting limited partners of the fair market value of their dissenting interests would require the dissenting limited partners to return such payment or a portion thereof by reason of Section 15666 or the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then that payment or portion thereof shall not be made and the dissenting limited partners shall become creditors of the limited partnership for the amount not paid, together with interest thereon at the legal rate on judgments until the date of payment, but subordinate to all other creditors in any proceeding relating to the winding up and dissolution of the limited partnership, such debt to be payable when permissible.

15679.9. Any cash distributions made by a limited partnership to a dissenting limited partner after the date of consummation of the reorganization, but prior to any payment by the limited partnership for such dissenting limited partner's interest, shall be credited against the total amount to be paid by the limited partnership for such dissenting interest.

15679.10. Except as expressly limited by this article, dissenting limited partners shall continue to have all the rights and privileges incident to their interests, until payment by the limited partnership for their dissenting interests. A dissenting limited partner may not withdraw a demand for payment unless the limited partnership consents thereto.

15679.11. A dissenting interest loses its status as a dissenting interest and the holder thereof ceases to be a dissenting limited partner and ceases to be entitled to require the limited partnership to purchase the interest upon the happening of any of the following:

(a) The limited partnership abandons the reorganization. Upon abandonment of the reorganization, the limited partnership shall pay, on demand, to any dissenting limited partner who has initiated proceeding in good faith under this article, all reasonable expenses incurred in such proceedings and reasonable attorneys' fees.

(b) The interest is transferred prior to its submission for endorsement in accordance with Section 15679.4.

(c) The dissenting limited partner and the limited partnership do not agree upon the status of the interest as a dissenting interest or upon the purchase price of the dissenting interest, and neither files a complaint nor intervenes in a pending action, as provided in Section 15679.6, within six months after the date upon which notice of the approval of the reorganization by the requisite vote or consent of limited partners was mailed to the limited partner.

(d) The dissenting limited partner, with the consent of the limited partnership, withdraws such limited partner's demand for purchase of the dissenting interest.

15679.12. If litigation is instituted to test the sufficient or regularity of the vote or consent of the limited partners in authorizing a reorganization, any proceedings under Sections 15679.6 and 15679.7 shall be suspended until final determination of that litigation.

15679.13. (a) This article applies to the following:

(1) A domestic limited partnership formed on or after January 1, 1991.

(2) A foreign limited partnership if (A) the foreign limited partnership was formed on or after January 1, 1991, or filed an application to qualify to do business on or after January 1, 1991, and (B) limited partners holding more than 50 percent of the voting power held by all limited partners of the foreign limited partnership reside in this state.

(3) A limited partnership if the partnership agreement so provides or if all general partners and a majority in interest of the limited partners determine that this article shall apply.

(b) This article does not apply to limited partnership interests governed by limited partnership agreements whose terms and provisions specifically set forth the amount to be paid in respect of such interests in the event of a reorganization of the limited partnership, or to limited partnerships with 35 or fewer limited partners, unless the partnership agreement provides that this article shall apply or unless all general partners and a majority in interest of the limited partners agree that this article shall apply.

15679.14. (a) No limited partner of a limited partnership who has a right under this article to demand payment of cash for the interest owned by such limited partner in a limited partnership shall have any right at law or in equity to attack the validity of the reorganization, or to have the reorganization set aside or rescinded, except in an action to test whether the vote or consent of limited partners required to authorize or approve the reorganization has been obtained in accordance with the procedures established therefor by the partnership agreement of the limited partnership.

(b) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, subdivision (a) shall not apply to any limited partner of such controlled party who has not demanded payment of cash for such limited partner's interest pursuant to this article; but if such

limited partner institutes any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, the limited partner shall not thereafter have any right to demand payment of cash for such limited partner's interest pursuant to this article.

(c) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, then, in any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, (1) a party to a reorganization which controls another party to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the limited partners of the controlled party, and (2) a person who controls two or more parties to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the limited partners of any party so controlled.

(d) Subdivisions (b) and (c) shall not apply if a majority in interest of the limited partners other than limited partners who are directly or indirectly controlled by, or under common control with, another party to the reorganization approve or consent to the reorganization.

(e) This section shall not prevent a partner of a limited partnership that is a party to a reorganization from bringing an action against a general partner of the limited partnership, the limited partnership, or any person controlling a general partner at law or in equity as to any matters (including, without limitation, an action for breach of fiduciary obligation or fraud) other than to attack the validity of the reorganization or to have the reorganization set aside or rescinded.

SEC. 10. Section 15699 is added to the Corporations Code, to read:

15699. No foreign lending institution organized as a foreign limited partnership and the activities of which in this state are limited as provided in subdivision (d) of Section 191 and which has on file the statement provided for in Section 2104 shall be required to register with the Secretary of State as may otherwise be provided in Section 15692.

SEC. 11. Section 12214 of the Government Code is amended to read:

12214. The fee for filing an amendment to the certificate of limited partnership or to the application for registration of a foreign limited partnership is fifteen dollars ($15). The fee for filing a certificate of continuation for a domestic limited partnership after a certificate of dissolution has been filed is fifteen dollars ($15). The fee for filing a certificate of merger shall be set by the Secretary of State at a level not to exceed the costs of processing the certificates. There is no fee for filing a certificate of dissolution or certificate of cancellation by a limited partnership, either domestic or foreign.

CHAPTER 1089

An act to add Chapter 19 (commencing with Section 77701) to Division 22 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Chapter 19 (commencing with Section 77701) is added to Division 22 of the Food and Agricultural Code, to read:

CHAPTER 19. RIVERSIDE COUNTY DATE COMMISSION

Article 1. Declaration and General Provisions

77701. The inability of date producers to maintain or expand present markets for Riverside County dates may result in unnecessary economic waste.

77702. These conditions vitally concern the health, peace, safety, and general welfare of the people of this state. It is, therefore, in the public interest to protect and enhance the reputation of Riverside County dates in intrastate, interstate, and foreign markets.

77703. A commission form of administration created by this chapter is designed to deal with the broad field of production research.

77704. No action taken by the commission, or by any individual in accordance with this chapter or with the rules and regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

Article 2. Definitions

77721. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

77722. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

77723. "Commission" means the Riverside County Date Commission.

77724. "Commissioner" means any member of the commission.

77725. "Date" means any variety of date produced in Riverside

County, including any dates produced in Riverside County and delivered to a processor for processing into any date product.

77726. "Ex officio member" means a nonvoting member of the commission.

77727. "Grower-handler" means any person who sells, markets, or distributes dates which he or she has produced.

77728. "Marketing year" or "marketing season" means the period from April 1 of any year to March 31, inclusive, of the following year.

77729. "Producer" or "grower-handler" means any person within Riverside County who produces or causes to be produced on land totaling more than one acre, either for fresh market or for processing, dates of any variety, and who, upon request, provides proof of commodity sale. For purposes of exercising the right to vote provided by this chapter, "producer" or "grower-handler" does not include a person who purchases a date crop on the tree, and the right to vote remains with the person selling the date crop on the tree to the purchaser.

77730. "Production research" means any research related to the production, harvest, and postharvest handling of dates, other than marketing research.

Article 3. The Riverside County Date Commission

77751. (a) There is in state government the Riverside County Date Commission. The commission is composed of six date producers and grower-handlers and one public member.

(b) The producers and grower-handlers, within Riverside County, shall elect four date producers and two grower-handler members who are residents of Riverside County.

(c) The public member, who shall be a resident of Riverside County, shall be appointed to the commission by the director from nominees recommended by the other members of the commission.

(d) The director, and other governmental officers as determined by the commission, shall be ex officio members of the commission.

77752. The district consists of all of Riverside County.

77753. (a) The director may require the commission to correct or cease any activity or function which is determined by the director not to be in the public interest or which is in violation of this chapter.

(b) If the commission refuses or fails to cease these activities or functions or to make corrections required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of the activities or functions, as required by the director, has been accomplished by the commission.

(c) Any action of the commission in violation of the written notice is without legal force or effect. The director, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed

activities or functions which are the subject of the written notice.

(d) At the same time the written notice is provided to the commission, the director shall notify the commission in writing of the specific acts which the director determines are not in the public interest or are in violation of this chapter, the director's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the director's recommendations with respect to any action that will make the activities or functions acceptable.

77754. The commission or the director may bring an action for judicial relief from the director's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other appropriate relief.

77755. When the director is required to concur in a decision of the commission, the director shall concur, refuse to concur, or request additional information from the commission within 15 working days from the date the director receives notification of the decision.

77756. The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the director acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the director's legal costs with regard to that action.

77757. An alternate member to each member of the commission, except the ex officio members, shall be elected or appointed in the same manner and for the same term as the member. An alternate member shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall exercise all of the rights, privileges, and powers of the member when serving on the commission. If the status of a member changes, thereby making the member ineligible to serve, or in the event of the death, removal, resignation, or disqualification of a member, the alternate member shall act as a member of the commission until a qualified successor is elected or appointed.

77758. Any vacancy on the commission occurring by the failure of any person elected to or serving on the commission as a member or alternate member to continue in his or her position due to a change in his or her status, thereby making the person ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy. Qualifications of any person to fill a vacancy on the commission shall be certified in writing to the director. The director shall notify the

commission if the director determines that the person is not qualified.

77759. (a) Any producer member, grower-handler member, or an alternate producer or grower-handler member on the commission shall be an individual or an employee representing a producer who has a financial interest in producing, or causing to be produced, dates for market or processing. The qualifications of a producer member, grower-handler member, and an alternate producer or grower-handler member shall be maintained during the entire term of office.

(b) Not more than one producer member or grower-handler member shall be a person employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, association, or business organization.

77760. The public member and his or her alternate member on the commission shall have all of the powers, rights, and privileges of any other member or alternate member, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the date industry.

77761. The term of office of all members and alternate members of the commission, except any ex officio member, shall be two years from the date of their election and until their successors are qualified. However, of the first members of the commission, one-half of the producers or grower-handlers shall serve for one year, and one-half of the producers or grower-handlers shall serve for two years, with the determination of term of each such member to be made by lot at the time of election. The terms of office of each member and alternate member shall be limited to four consecutive terms, except that any member selected for a one-year term may serve not more than five consecutive terms.

77762. The commission is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a seal, and has all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

77763. A quorum of the commission is a majority of the voting commissioners of the commission. Except as otherwise provided in Section 77883, the vote of the majority of the members present at a meeting at which there is a quorum shall constitute the act of the commission.

77764. The director or his or her representative shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

77765. No member of the commission, or member of a committee established by the commission who is a nonmember of the commission, shall receive any compensation. Each member of the commission or each alternate member serving in place of a member, except ex officio members, and each member of a committee established by the commission who is a nonmember of the

commission, may receive per diem of not more than one hundred dollars ($100) per day, as established by the commission, and may also receive necessary traveling expenses and meal allowances as approved by the commission. The per diem shall be paid to members for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as approved by the commission.

77766. All funds received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks which the commission may designate and shall be disbursed by order of the commission through an agent or agents designated by the commission for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars ($25,000).

77767. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member, alternate member, employee, or agent of the commission is personally liable for the contracts of the commission nor is any such person responsible individually in any way to any producer or grower-handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission. Liability is several and not joint, and no member, alternate member, employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

Article 4. Powers and Duties of the Commission

77781. The powers and duties of the commission include, but are not limited to, all of those specified in this article.

77782. The commission may adopt, amend, and repeal regulations and operating procedures necessary to carry out this chapter, including regulations governing appeals from actions taken by the commission pursuant to any of its regulations or operating procedures.

77783. The commission may administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, the proper or advisable implementation of the purposes of this chapter. The commission may, in this connection, enter into contracts for services

with public and private agencies which the commission determines necessary to carry out this chapter.

77784. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers it deems necessary. The officers have the powers and duties delegated to them by the commission.

77785. The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or agency of the state or federal government to perform the functions prescribed by this section under the control of the commission. If any person employed by the commission 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 person.

77786. The commission may fix the compensation for all employees of the commission.

77787. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

77788. The commission may establish offices, incur expenses, enter into contracts and agreements, create liabilities, and borrow funds in advance of receipt of assessments that may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

77789. The commission shall keep accurate books, records, and accounts of all its dealings which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. A summary of the audit shall be reported to all producers and grower-handlers and copies of the summary shall also be submitted to 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.

77790. The commission may make, in its name, contracts to receive or render services in formulating and conducting plans and programs and any other contracts or agreements that the commission deems necessary for carrying out this chapter.

77791. The commission may conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere regarding this chapter. In connection with the research, the commission may accept contributions of private, state, or federal funds for purposes of this chapter, and make contributions

of funds to other persons or state or federal agencies conducting the research.

77792. The commission may publish and distribute, without charge, bulletins and other communications for the dissemination of information to producers and grower-handlers.

77793. The commission may establish an assessment rate to defray the operating costs of the commission to carry out the purposes of this chapter.

77794. The commission shall adopt an annual budget according to accepted accounting practices. The director shall concur in the adoption of the budget prior to the encumbrance of funds, except for encumbrances necessary to pay the compensation of employees of the commission.

77795. The commission shall annually prepare and submit to the director, for his or her concurrence, a statement of contemplated activities authorized pursuant to this chapter.

77796. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

Article 5. Implementation and Voting Procedures

77811. (a) Within 90 days after a request by the proponents of the commission, or as soon thereafter as possible, the director shall establish a list of producers and grower-handlers eligible to vote on implementation of this chapter. In establishing the list, the director may require that processors, shippers, county agricultural commissioners, date producers, grower-handlers, and others, submit the names and mailing addresses of all known producers and grower-handlers. The director may also require that the information provided include the quantity of dates marketed by producers and grower-handlers or, in the alternative, may establish procedures for receiving the information at the time of the vote specified in Section 77812. The request for the information shall be in writing, and the requested information shall be filed within 30 days following receipt of the request.

(b) Any producer or grower-handler whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the director a signed statement identifying himself or herself as a producer or grower-handler. The absence of a producer's or grower-handler's name from the list does not exempt the producer or grower-handler from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

77812. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the director finds, in a referendum vote conducted by the director, that at least 40 percent of the total number of producers and grower-handlers from the list established by the director pursuant to

this article have participated and that either of the following has occurred:

(a) Sixty-five percent or more of the producers and grower-handlers who voted in the referendum voted in favor of this chapter, and the producers and grower-handlers so voting marketed a majority of the total quantity of dates in the preceding season by all of the producers and grower-handlers who voted in the referendum.

(b) A majority of the producers and grower-handlers who voted in the referendum voted in favor of this chapter, and the producers and grower-handlers so voting marketed 65 percent or more of the total quantity of dates in the preceding marketing year by all of the producers and grower-handlers who voted in the referendum.

77813. (a) The director shall establish a period to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may be necessary to conduct the referendum.

(b) If the initial period established is less than 60 days, the director may extend the period to not more than 60 days.

77814. The failure of a producer or grower-handler to receive a ballot shall not invalidate a referendum.

77815. If the director finds that a favorable vote has been given as provided in this article, the director shall certify and declare this chapter operative and give notice of the favorable vote to all producers and grower-handlers whose names and addresses are on file with the director.

77816. If the director finds that a favorable vote has not been given as provided in this article, the director shall certify and declare this chapter inoperative. The director may conduct another implementation referendum vote one or more years after the previous vote has been taken.

77817. Upon certification of the commission, the director shall contact, by mail, every producer and grower-handler in the district, or call meetings of producers and grower-handlers in the district for the purpose of nominating and electing persons to the commission. All producers and grower-handlers on the director's list shall be given written notice of any meeting at least 15 days prior to the meeting date.

77818. To be eligible for election to the commission, each producer and each grower-handler nominee shall present to the director a nomination petition with the signatures of at least six eligible producers or grower-handlers.

77819. Subsequent to the first election of members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures which are adopted by the commission with the concurrence of the director.

77820. (a) Prior to the director holding the referendum pursuant to this article, the proponents of the commission shall

deposit with the director any amounts that the director determines necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the commission who deposited the funds with the director.

(c) Upon the establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the director which were used in carrying out this article, and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

77841. (a) The commission shall, not later than April 20 of each year, establish the assessment for the following marketing season, which shall not exceed fifty cents ($0.50) per any date tree, bearing or nonbearing.

(b) An assessment greater than the amount provided in subdivision (a) may not be imposed unless and until a greater assessment amount is approved by the producers and grower-handlers by the vote specified in Section 77812.

77842. This chapter does not apply to any person who grows dates for his or her own home use, any person who grows dates or date trees used only for ornamental purposes, or to any person who grows dates on land totaling one acre or less who is not a producer or grower-handler. However, any such person subject to this section shall file an affidavit with the commission establishing that he or she is exempt from this chapter.

77842.5. (a) Every producer or grower-handler shall keep a complete and accurate record of all date trees he or she grows. The records shall be in simple form and contain any information that the commission prescribes.

(b) The records shall be retained by the producer or grower-handler for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

77843. (a) The commission may specify the conditions under which proprietary information obtained from producers and grower-handlers may be disclosed. Otherwise, all proprietary information obtained by the commission or the director from producers or grower-handlers is confidential and shall not be disclosed except when required in a judicial proceeding.

(b) Information on volume shipments, crop value, and any other related information which is required for reports to governmental agencies, financial reports to the commission or aggregate sales and inventory information, and any other information which the commission requires that gives only totals, but excludes individual producer or grower-handler information, may be disclosed by the

commission.

77844. The assessments shall be levied upon and paid by the producer or grower-handler pursuant to this chapter.

77845. Any assessment which is levied pursuant to this chapter is a personal debt of every producer or grower-handler so assessed.

77846. Any producer or grower-handler who fails to file a return or pay any assessment within the time required by the commission shall pay the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 1½ percent interest per month on the unpaid balance.

Article 7. Actions and Penalties

77861. It is unlawful for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission.

(b) Secrete, destroy, or alter records required to be kept under this chapter.

77862. The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the director. The determination of the director shall be subject to judicial review upon petition filed with the superior court.

77863. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of that part, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business involving dates subject to this chapter, until there is full compliance and satisfaction of the

judgment. Upon a favorable judgment for the commission, it is entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

77864. The suspension or termination of this chapter shall not affect or waive any right, duty, obligation, or liability which has arisen or which may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Continuation or Suspension and Termination

77881. Except as otherwise specified in this article, the commission shall conduct a referendum among the producers and grower-handlers pursuant to Article 5 (commencing with Section 77811) every five years following implementation of this chapter to determine whether the operation of this chapter shall be reapproved and be continued in effect. There is a favorable vote under this chapter if the director determines from the referendum that a majority of the eligible producers and grower-handlers voting in the referendum voted to continue the operation of this chapter. If the director finds that a favorable vote has been given, the director shall so certify and this chapter shall remain effective. If the director finds that a favorable vote has not been given, the director shall so certify and declare the operation of this chapter and the commission suspended on December 31, 1996. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 77885. No bond or security shall be required for any such referendum.

77882. If a referendum is conducted as the result of a petition pursuant to Section 77883, the referendum shall be conducted every fifth year following the industry petitioned referendum.

77883. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the director that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The director shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the director requesting a suspension signed by not less than 20 percent of the producers and grower-handlers by number who produced not less than 20 percent of the volume in the immediately preceding marketing year, hold a referendum among the producers and grower-handlers to determine if the operations of the commission shall be suspended. However, the director shall not hold a

referendum as a result of the petition unless the petitioner shows, by a preponderance of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The director shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period. The director shall suspend the operation of this chapter if the director finds that at least 40 percent of the total number of producers and grower-handlers from the list established by the director have participated in the referendum and either one of the following has occurred:

(1) Sixty-five percent or more of the producers and grower-handlers who voted in the referendum voted in favor of suspension, and the producers and grower-handlers so voting marketed a majority of the total quantity of dates marketed in the preceding marketing year by all of the producers and grower-handlers who voted in the referendum.

(2) A majority of the producers and grower-handlers who voted in the referendum voted in favor of suspension, and the producers and grower-handlers so voting marketed 65 percent or more of the total quantity of dates marketed in the preceding marketing year by all of the producers and grower-handlers who voted in the referendum.

77884. (a) The director shall terminate the commission at the end of the then current marketing year if the director finds that the termination of the commission is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers and grower-handlers that produce at least 51 percent of the total gross dollar value of dates.

(b) The person or persons originating the request shall file a written notice with the director in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the director.

(c) The signatures to the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition shall specify his or her place of business in a manner that will enable the location to be readily ascertained.

(d) The petition shall bear a copy of the notice of intention to terminate the commission. Signatures shall be secured within the time limit specified in this section.

77885. After the effective date of suspension, the operation of the commission shall be concluded and any and all funds remaining held by the commission and not required to defray the expenses of concluding and terminating operations of the commission shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year.

However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to the University of California for continued research on dates. If no such program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

77886. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all producers and grower-handlers whose names and addresses are on file with the commission and to the appropriate policy committees in both the Assembly and Senate.

SEC. 2. This act, which applies only to Riverside County, is a special act within the meaning of Section 16 of Article IV of the California Constitution. The Legislature finds that a general statute cannot be made applicable in this situation because Riverside County is unique in the production and shipment of dates that enter channels of trade around the world.

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 1090

An act to amend Sections 12076 and 12077 of, and to amend the heading of Chapter 1 (commencing with Section 12000) of Title 2 of Part 4 of, the Penal Code, and to amend Sections 8100, 8104, and 8105 of the Welfare and Institutions Code, relating to firearms, and making an appropriation therefor.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. The heading of Chapter 1 (commencing with Section 12000) of Title 2 of Part 4 of the Penal Code is amended to read:

CHAPTER 1. FIREARMS

SEC. 2. Section 12076 of the Penal Code, as amended by Chapter 177 of the Statutes of 1990, is amended to read:

12076. (a) The purchaser or transferee of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser or transferee. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register shall, on the date of sale or transfer, be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale or transfer is made. Where the sale or transfer is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale or transfer is made.

The third copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or transferee or the pistol, revolver, or other firearm to be purchased or transferred, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to

subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased or transferred, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse the following:

(1) The department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local public mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8105 of the Welfare and Institutions Code made by the act which also added this paragraph.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, and the estimated reasonable costs of local public mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision.

(e) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

SEC. 3. Section 12077 of the Penal Code, as amended by Chapter 177 of the Statutes of 1990, is amended to read:

12077. (a) (1) The Department of Justice shall prescribe the form of the register described in Section 12074. There shall be two forms of the register with the format set forth in paragraph (2) of this subdivision for pistols, revolvers, and other firearms capable of being

concealed upon the person and the format set forth in paragraph (3) of this subdivision for all firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person.

(2) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a mental patient, or whether the purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

(3) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as

described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a mental patient, or whether the purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

(b) (1) The original of each dealer's record of sale of a firearm document shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General or agents of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification.

(2) Dealers shall use ink to complete each document.

(3) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(4) Each original shall contain instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(5) One firearm transaction shall be reported on each record of sale document.

(c) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm.

(2) "Purchase" means the purchase or transfer of a firearm.

SEC. 4. Section 8100 of the Welfare and Institutions Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

8100. No person who is a mental patient in any hospital or institution or on leave of absence from any hospital or institution shall own or have in his or her possession or under his or her custody or control, or purchase or receive or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon.

"Deadly weapon," as used in this section and Sections 8101, 8102, and 8103 means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

A violation of this section shall be a public offense punishable by imprisonment in the state prison, or in the county jail for not more than one year or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 5. Section 8104 of the Welfare and Institutions Code is amended to read:

8104. The State Department of Mental Health shall maintain in a convenient central location and shall make available to the Department of Justice those records which the State Department of Mental Health has in its possession which are necessary to identify persons who come within the provisions of Section 8100 or 8103. These records shall be made available to the Department of Justice upon request. The Department of Justice shall make such requests only with respect to its duties with regard to applications for permits for, or the purchase or transfer of, explosives as defined in Section 12000 of the Health and Safety Code, devices defined in Section 12001 of the Penal Code, machineguns as defined in Section 12200 of the Penal Code, short-barreled shotguns or short-barreled rifles as defined in Section 12020 of the Penal Code, assault weapons as defined in Section 12276 of the Penal Code, and destructive devices as defined in Section 12301 of the Penal Code. These records shall not be furnished or made available to any person unless the department determines that disclosure of any information in the records is necessary to carry out its duties with respect to applications for permits for, or the purchase or transfer of, explosives, destructive devices, devices as defined in Section 12001 of the Penal Code, short-barreled shotguns, short-barreled rifles, assault weapons, and machineguns.

SEC. 6. Section 8105 of the Welfare and Institutions Code is amended to read:

8105. (a) The Department of Justice shall request each public and private mental hospital, sanitarium, and institution to submit to the department that information with respect to mental patients and former mental patients as the department deems necessary to carry out its duties under Section 12076 of the Penal Code.

(b) Upon request of the Department of Justice pursuant to subdivision (a), each public and private mental hospital, sanitarium, and institution shall submit to the department that information with respect to mental patients and former mental patients as the department deems necessary to carry out its duties under Section 12076 of the Penal Code.

(c) All information provided to the Department of Justice pursuant to this section shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used by the department only to determine eligibility to acquire and possess firearms.

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. 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 1091

An act to amend, repeal, and add Section 11205 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990.]

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 regulate the naming of traffic violator schools so as to prevent the use of those names which are undesirable from a public safety perspective and are contrived only to attract students.

The Department of Motor Vehicles regulates all traffic violator schools, but has not established guidelines for the names of those schools. Absent guidelines for appropriate school names, many schools have adopted names that are unprofessional and undignified to the point of fostering a negative image, undermining the intent of the traffic safety training program, and constituting an embarrassment to members of the public, judges, the courts, and the traffic school industry. This act is intended to eliminate the abusive practice of the use of inappropriate traffic school names.

This act defines the responsibilities of the department with respect to what it is required to include on the court referral list and traffic school owners' lists, and how frequently the lists are to be printed and distributed.

SEC. 2. Section 11205 of the Vehicle Code is amended to read:

11205. (a) The department shall publish a list of all of the approved locations of traffic violator school classes, to be transmitted to each municipal and justice court in the state in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day

of July. It shall include all of the following:

(1) The name of each school.

(2) A phone number used for student information.

(3) The judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The department shall transmit to each municipal and justice court a copy of the proposed referral list 60 days prior to its publication. Within 30 days following receipt of the court's copy, each court shall notify the department of any school names the court desires to have removed from the list. Each court may remove any name from the list it determines inappropriate, using as its criteria whether the name is misleading to the public, unprofessional, or implies that the school offers inducements or premiums which derogate or distort the instructional intent of the traffic safety program.

(d) Any school determined by a court to have an inappropriate name shall appear on the approved list under the general term "Traffic School" with its license number.

(e) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each municipal and justice court in the state. This list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

(1) The name of each school.

(2) The business office address.

(3) The business mailing address if different from paragraph (2).

(4) The business office telephone number.

(5) The license number.

(6) The owner's name.

(7) The operator's name.

(f) Except as otherwise provided in subdivision (d) of Section 42005, the court shall only use the current list of traffic violator schools published by the department when it orders a person to attend a traffic violator school pursuant to subdivision (a) or (b) of Section 42005.

(g) If any provision of subdivision (c) or (d), as amended by Section 2 of AB 1111 of the 1989–90 Regular Session, or the application thereof to any person, is held to be unconstitutional, this section is repealed on the date the decision of the court so holding becomes final.

SEC. 3. Section 11205 is added to the Vehicle Code, to read:

11205. (a) The department shall publish annually, or more often as necessary to serve the purposes of this chapter, a list of all schools which are licensed pursuant to this chapter. The list may identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit a copy of the list to each justice court and each

municipal court in the state. The department shall periodically revise the list so that each court may have a current list of all licensed traffic violator schools.

(b) Except as otherwise provided in subdivision (d) of Section 42005, the court shall only use the current list of traffic violator schools published by the department when it orders a person to attend a traffic violator school pursuant to subdivision (a) or (b) of Section 42005.

(c) If any provision of subdivision (c) or (d) of Section 11205, as amended by Section 2 of AB 1111 of the 1989–90 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section 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 protect the motoring public and enhance the effectiveness of traffic violator schools at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1092

An act to amend Sections 10249.2 and 10249.3 of, and to add Sections 10249.11, 10249.5, 10249.6, and 10249.7 to, the Business and Professions Code, relating to subdivisions, and making an appropriation therefor.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 10249.11 is added to the Business and Professions Code, to read:

10249.11. "Accessible urban subdivision" as used in this article, means a subdivision which meets all of the following criteria:

(a) Is situated within a Metropolitan Statistical Area as identified by the United States Office of Management and Budget, which area is situated within the United States and within 200 miles of the boundary of this state.

(b) In which all lots or parcels to be offered for residential use will be sold or offered for sale with all improvements completed that are necessary to occupancy after addition of a completed residential structure (or with such structure already completed), or with financial arrangements for those improvements determined to be adequate by the city or other appropriate governmental jurisdiction.

SEC. 2. Section 10249.2 of the Business and Professions Code is amended to read:

10249.2. The sale or lease, or the offering for sale or lease, of lots or parcels in a subdivision situated outside of this state shall be governed by Article 6 (commencing with Section 10237) and by Chapter 1 (commencing with Section 11000) of Part 2, insofar as applicable, except that the provisions of Section 10237.6 shall not be applicable to an accessible urban subdivision.

The Real Estate Commissioner may adopt regulations reasonably necessary to enforce this article.

SEC. 3. Section 10249.3 of the Business and Professions Code is amended to read:

10249.3. (a) The Real Estate Commissioner may by regulation prescribe filing fees in connection with applications to the Department of Real Estate pursuant to the provisions of this article which are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this article. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a permit to be issued under authority of this article shall not exceed the following for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease:

(1) An application for an original permit: One thousand six hundred dollars ($1,600) plus ten dollars ($10) for each subdivision interest to be offered.

(2) An application for a renewal permit: Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered which was not permitted to be offered under the permit to be renewed.

(3) An application for an amended permit: Three hundred dollars ($300) plus ten dollars ($10) for each subdivision interest to be offered under the amended permit for which a fee has not previously been paid.

(4) An application for a preliminary permit: Five hundred dollars ($500).

(c) All fees collected by the Department of Real Estate under authority of this article shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the department pursuant to the provisions of this article shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as a result of mistake or inadvertence.

SEC. 4. Section 10249.5 is added to the Business and Professions Code, to read:

10249.5. (a) Any person subject to Section 10249 who sells a lot or parcel in an accessible urban subdivision to a buyer who is

identified as, or is known by the subdivider to be, a California resident, shall comply with either subdivision (1) or (2).

(1) Deliver to the prospective buyer prior to the execution of a binding contract to effect a sale, a true copy of a current appraisal.

(2) Provide as a condition of the contract effecting the sale that, before the close of escrow, there shall be delivered to the prospective buyer a copy of an appraisal prepared for the purpose of the sale, or for a lender who provides a loan secured by the property to be sold in which the proceeds will finance all or a portion of the purchase price, or a written certification of the opinion of value set forth in the appraisal and signed by the appraiser. In addition, if that appraisal or certification is delivered after execution of a binding offer to purchase, and the contract sale price is more than 110 percent of the appraised value set forth in the appraisal or certification, the prospective purchaser shall have three days after delivery in person or five days after delivery by deposit in the mail to terminate his or her offer by written notice of termination delivered to the seller.

(b) As used in subdivision (a), an "appraisal" means an opinion of value of the lot or parcel together with any improvements thereon, or to be constructed thereon, and which are included in the sale, prepared under the standards adopted for federally related real estate appraisals pursuant to Section 1112 of Title XI of the Financial Institution Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73), and the appraiser shall be qualified under law to make that appraisal.

(c) As used in this section, a "current appraisal" is as reflected in a report dated within 90 days of its delivery pursuant to this section.

(d) "Delivery" pursuant to this section means personal delivery or deposit in the mail properly addressed to the person stipulated in this section.

(e) Compliance with this section shall be in lieu of any other appraisal or determination of price or value required pursuant to this part.

SEC. 5. Section 10249.6 is added to the Business and Professions Code, to read:

10249.6. The commissioner may issue a preliminary permit for an accessible urban subdivision, provided it is not also a subdivision as defined in subdivision (e) of Section 11004.5. That preliminary permit shall issue on the same basis and conditions upon which the department issues preliminary public reports on subdivisions situated within the state.

SEC. 6. Section 10249.7 is added to the Business and Professions Code, to read:

10249.7. The provisions of Section 11010.2 shall apply to an application for issuance of a permit for an accessible urban subdivision except as to the following:

(a) All references to a public report in Section 11010.2 will be read as referring to a permit under this article.

(b) The commissioner shall notify the applicant in writing of the

determination that the notice and application is, or is not, substantially complete with respect to quantitative requirements within 15 days of receipt of the notice and application.

(c) After making the determination that the notice and application are substantially complete as described in (b) above, the commissioner shall provide the applicant with a list of all deficiencies and substantive inadequacies necessary for the notice and application to be qualitatively complete within 75 days of that determination in the case of subdivisions described in Section 11004.5 and within 30 days of that determination in the case of other subdivisions.

(d) The provisions of subdivision (c) shall not be applicable to those deficiencies and substantive inadequacies, if any, based on an inspection of the subdivision. A list of any of those deficiencies or inadequacies will be provided to the applicant within 20 days after discovery by the person performing the inspection.

(e) The commissioner shall issue a permit within 30 days, in the case of a subdivision specified in Section 11004.5, or 20 days, in the case of other subdivisions, after the notice and application are determined to be qualitatively and substantially complete and submittal of recorded or filed instruments and evidence of financial arrangements required by the commissioner.

CHAPTER 1093

An act to amend Sections 25135.7 and 25135.9 of, and to add Section 25135.75 to, the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 25135.7 of the Health and Safety Code is amended to read:

25135.7. (a) A county shall submit the final county hazardous waste management plan adopted by the county to the department for review and approval on or before October 1, 1988. If a county shows the department that the county has made substantial progress towards completing the county hazardous waste management plan and needs more time to complete the plan, the department may extend this date to June 1, 1989. If the department sends comments on the draft county hazardous waste management plan to a county after June 30, 1988, the department may extend the due date for submittal of the final county hazardous waste management plan for that county to September 1, 1989. The department shall, on or before December 31, 1988, or on or before November 30, 1989, if the county

is given a time extension, review and either approve or disapprove the county hazardous waste management plan. If an additional time extension is given to September 1, 1989, pursuant to this subdivision, the department shall review and either approve or disapprove the county hazardous waste management plan on or before February 28, 1990. The department shall approve the county hazardous waste management plan if the department makes all of the following determinations:

(1) The plan substantially complies with the guidelines for the preparation of hazardous waste management plans adopted by the department.

(2) The plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste generated within the county.

(3) If the plan contains a determination pursuant to paragraph (5) of subdivision (d) of Section 25135.1 that there is a need for additional or expanded hazardous waste facilities, the plan proposes general areas, or, as determined appropriate by the county, proposes specific sites which may be suitable locations for a facility. However, if the plan instead contains siting criteria for selecting sites for new hazardous waste facilities, the plan shall propose general areas where the criteria might be applicable.

(4) If the county preparing the plan has entered into a formal agreement with other counties to manage hazardous waste, the agreement is documented.

(b) Within 180 days after the department approves a county hazardous waste management plan, the county shall either incorporate the applicable portions of the plan, by reference, into the county's general plan, or enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance decisions are consistent with the portions of the county hazardous waste management plan which identify specific sites or siting criteria for hazardous waste facilities.

(c) Within 180 days after receiving written notification from the county that the county hazardous waste management plan has been approved, each city within that county shall do one of the following:

(1) Adopt a city hazardous waste management plan containing all of the elements required by subdivision (d) of Section 25135.1 which shall be consistent with the approved county hazardous waste management plan.

(2) Incorporate the applicable portions of the approved county plan, by reference, into the city's general plan.

(3) Enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance decisions are consistent with the portions of the approved county plan which identify general areas or siting criteria for hazardous waste facilities.

(d) This section does not limit the authority of any city to attach

appropriate conditions to the issuance of any land use approval for a hazardous waste facility in order to protect the public health, safety, or welfare, and does not limit the authority of a city to establish more stringent planning requirements or siting criteria than those specified in the county hazardous waste management plan.

(e) Any amendment to an adopted county hazardous waste management plan requires the approval of the department, the county, and a majority of the cities within the county which contain a majority of the population of the incorporated area of the county.

SEC. 2. Section 25135.75 is added to the Health and Safety Code, to read:

25135.75. (a) If the department disapproves a county hazardous waste management plan pursuant to subdivision (a) of Section 25135.7, or a regional hazardous waste management plan pursuant to Section 25135.3, the department shall provide the county or regional council of governments, in writing and at the time of disapproval, with a detailed description of its reasons for disapproval of the plan. A county or regional council of governments with a disapproved hazardous waste management plan may submit a revised plan to the department one time only. A revised county or regional hazardous waste management plan shall be submitted to the department within 270 days of the effective date of the act adding this section, or within 270 days of plan disapproval if the plan is disapproved by the department after the effective date of the act adding this section. A county or regional council of governments shall notify the department of their intent to revise and resubmit a disapproved plan within 45 days of the effective date of the act adding this section, or within 45 days of plan disapproval, if the plan is disapproved after the effective date of the act adding this section. A resubmitted county or regional plan shall contain detailed responses to all of the reasons for disapproval of the plan described by the department. The department shall provide counties with informational guidelines on developing an approvable plan.

(b) Before submitting a revised county hazardous waste management plan to the department pursuant to this section, the revised plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, as specified in subdivisions (f) and (g) of Section 25135.6. A city which fails to act upon a county plan revised pursuant to this section within 90 days after the plan has been submitted to the city by the county shall be deemed to have approved the revised plan.

(c) The department shall review and either approve or disapprove a county or regional hazardous waste management plan revised pursuant to subdivision (a) within 180 days of receiving the revised plan.

(1) The department shall approve a revised county hazardous waste management plan if the department makes all of the

determinations in paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 25135.7. If the department approves a revised county hazardous waste management plan pursuant to this section, the county shall comply with subdivision (b) of Section 25135.7, and each city within that county shall comply with subdivision (c) of Section 25135.7.

(2) The department shall approve a revised regional hazardous waste management plan if the department makes all of the determinations in subdivision (g) of Section 25135.3.

(d) A county which did not submit its plan to the department within the due dates for plan submittal established by subdivision (a) of Section 25135.7, or a county whose plan was not formally acted upon by the department by the February 28, 1990, deadline, may submit their plan to the department for review and approval or disapproval pursuant to the provisions governing the resubmittal of revised plans established by this section.

(e) A council of governments which did not submit its plan to the department within the due dates for plan submittal established by Section 25135.3, or whose plan has not been formally acted upon by the department, may submit their plan to the department for review and approval or disapproval pursuant to the provisions governing the resubmittal of revised plans established by this section.

SEC. 3. Section 25135.9 of the Health and Safety Code is amended to read:

25135.9. (a) The department shall, pursuant to this section and subdivision (c) of Section 25170, prepare and adopt a state hazardous waste management plan. The state hazardous waste management plan shall serve as a comprehensive planning document for the state and shall be prepared as a useful informational source for the public, local government, and regional councils of government. The state hazardous waste management plan shall be prepared in conjunction with, and shall take into account, hazardous waste management plans adopted by counties and regional councils of governments.

(b) The state hazardous waste management plan shall be prepared and adopted by the department on or before November 30, 1991, shall be reviewed annually, and shall be revised to reflect new information at least once every three years.

(c) In preparing and adopting the state hazardous waste management plan, and in revising the plan thereafter, the department shall do all of the following:

(1) Publish the draft plan or the revised plan and make it available to the public for review and comment at least three months before final adoption.

(2) Conduct workshops and at least two public hearings on the plan or the draft revised plan, one in the southern part of the state and one in the northern part of the state, to solicit the views of the public, local government, regional councils of governments, and interested parties.

(3) Include in the final state hazardous waste management plan

and in revisions of the plan, a summary of the comments received and the department's responses to those comments.

(d) The state hazardous waste management plan, and each revision of the plan, shall include, but need not be limited to, all of the following elements:

(1) An analysis of the hazardous waste streams produced in the state, an accounting of the volumes of hazardous waste produced in each county and region of the state, by type of waste, and estimates of the expected rates of hazardous waste production, by type of waste, during the next five years.

(2) An inventory of existing and planned hazardous waste facilities which handle, treat, recycle, dispose, or otherwise manage hazardous wastes produced in the state. The inventory shall include a description of the facilities, a determination of the capacity of each existing or planned facility to handle, treat, recycle, dispose, or otherwise manage the waste streams it is authorized to handle, treat, recycle, dispose, or otherwise manage, and a description of the current progress and status of each planned facility in achieving operational status, including a timetable for becoming operational.

(3) An assessment of the need for additional hazardous waste facilities to manage the volumes of hazardous waste currently produced or which are expected to be produced during the next 20 years.

(4) An identification of the areas or regions of the state where new or expanded capacity to manage hazardous wastes are needed and the types of facilities that should be sited and constructed.

(5) A description of the policies, programs, incentives, requirements, prohibitions, or other measures which, if implemented, would reduce or eliminate the need for new or expanded facilities.

(6) A statement of goals, objectives, and policies currently in effect, or in the process of development, for the siting of hazardous waste facilities and the management of hazardous wastes during the next five years.

(7) A schedule of recommended actions, including specific dates, for carrying out state, regional, and local actions to implement the state hazardous waste management plan.

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 establish procedures for state, regional, and county hazardous waste management plans as early as possible, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 1094

An act to amend Section 14580 of, and to add Sections 14513.2, 14513.3, 14549, 14552.5, and 14552.51 to, the Public Resources Code, relating to glass.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

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

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

(a) Recycling old glass from glass containers saves landfill space, reduces energy consumption, and preserves natural resources. Specific benefits can be derived by separating old glass from solid waste and by using old glass to produce new glass containers.

(b) Californians purchase millions of tons of glass each year, but only a portion of this glass is separated from the solid waste stream and collected for reuse. Each ton of old glass that is recovered saves landfill space, and recycling recovered glass into new glass containers saves energy otherwise used to make glass containers from virgin sources.

(c) A critical component for increasing the recycling of glass containers is securing adequate markets for the recovered glass separated from the solid waste stream and for the finished products made from that material.

(d) Increasing the demand for glass containers made from recovered glass will stimulate manufacturers of glass to use larger amounts of recovered glass in their production of glass containers.

(e) The development of markets for recycled-content glass of all types and grades is beneficial to the state, and the use of recycled-content glass should be encouraged to the maximum feasible amount.

SEC. 2. Section 14513.2 is added to the Public Resources Code, to read:

14513.2. (a) "Glass container manufacturer" means a person who manufactures commercial containers, whose principal component part or parts consist of virgin glass, postfilled glass, or any combination of both, for sale in California or for export to other states or countries.

(b) "Glass container manufacturer" includes, but is not limited to, all commercial manufacturing operations which produce beverage containers, food or drink packaging material made primarily of glass, or any combination of both of those items.

SEC. 3. Section 14513.3 is added to the Public Resources Code, to read:

14513.3. "Glass food or drink container" means any nonbeverage container, whose principal component part or parts consist of virgin

glass, postfilled glass, or any combination of both, in which any food or drink is sold or offered for sale in California.

SEC. 4. Section 14549 is added to the Public Resources Code, to read:

14549. (a) Every glass container manufacturer shall report to the department each month, by a method as determined by the department, beginning October 1, 1991, the amount of total tons of new glass food, drink, and beverage containers made or sold in California by that glass container manufacturer and the tons of California postfilled glass used in the manufacturing of those new containers.

(b) Each glass container manufacturer shall use the following minimum percentages of postfilled glass in the manufacturing of their glass food, drink, or beverage containers:

(1) Fifteen percent on and after January 1, 1992.

(2) Twenty-five percent on and after January 1, 1993.

(3) Thirty-five percent on and after January 1, 1996.

(4) Forty-five percent on and after January 1, 1999.

(5) Fifty-five percent on and after January 1, 2002.

(6) Except as provided in subdivision (c) or (d), 65 percent on and after January 1, 2005.

(c) If the department determines that glass container manufacturers cannot achieve the minimum percentage of postfilled glass required to be used in the manufacture of glass food, drink, or beverage containers pursuant to subdivision (b) because of a lack of available glass cullet, the department may reduce the 65 percent amount to that amount it determines to be the maximum feasible amount which can be achieved by glass container manufacturers.

(d) A glass container manufacturer may seek a reduction or waiver of the minimum postfilled glass percentage required to be used in the manufacture of glass food, drink, or beverage containers pursuant to subdivision (b). The department may grant a reduction or waiver of the percentage requirements if it finds and determines that it is technologically infeasible for the glass container manufacturer to achieve the percentage requirements.

SEC. 5. Section 14552.5 is added to the Public Resources Code, to read:

14552.5. (a) The department shall supply all certified processors with a standardized rejection form which shall include, but not be limited to, the name of the parties rejecting the postfilled glass material, the date of the rejections, the reasons for the rejections, the amount of rejected material, and a detailed accounting of the steps taken by the processor and glass container manufacturer to avert landfilling or disposal of the material, as required by subdivision (c) of Section 14552.51.

(b) Every glass container manufacturer shall fill out the standardized rejection form specified in subdivision (a) whenever that glass container manufacturer rejects a load of redeemed glass materials physically delivered to the manufacturer's place of

business and offered for sale by a certified processor. The rejection form shall be filled out by the glass container manufacturer at the time of the rejection and immediately given to the certified processor for submittal to the department. Any glass container manufacturer who refuses to fill out the standardized rejection form required by this subdivision is in violation of this division and is subject to the fines and penalties in Section 14591.

(c) If a processor has made a good faith effort, as determined by the department, to locate a willing purchaser and is unsuccessful, the processor may fill out the standardized rejection form specified in subdivision (a) and submit it to the department. The processor rejection form shall include, but is not limited to, the name of the processor, the glass container manufacturers and other potential purchasers contacted, a detailed accounting of the methods used to contact the potential buyers, the date of the rejections, the reasons given for the rejections, the amount of postfilled glass rejected, and any other steps taken to avert landfilling or disposal of the material.

(d) If a glass container manufacturer rejects a load of postfilled glass containers by telephone, written correspondence of any kind, or other similar method, the glass container manufacturer shall, in a manner prescribed by the department, keep accurate logbooks of the offer of loads by the certified processor, and make that logbook available for inspection by the department upon demand. The logbook shall contain, but is not limited to, the same information required in the rejection form pursuant to subdivision (a).

(e) The standardized rejection form specified in subdivision (a) shall be submitted to the department by the certified processor with the written request to dispose of the redeemed material submitted pursuant to Section 14552.51. This material shall not be disposed of without a written authorization to do so by the department pursuant to Section 14552.51.

(f) Nothing in this section shall be interpreted to lessen certified processors' and glass container manufacturer's responsibilities relating to glass container recycling, or diminish in any way the department's authority to carry out the intent and goals of this division.

SEC. 6. Section 14552.51 is added to the Public Resources Code, to read:

14552.51. (a) On or after January 1, 1991, no certified processor seeking to dispose of rejected postfilled containers may dispose of rejected postfilled containers unless the certified processor first submits to the department, in writing, a request to dispose of the rejected material. No certified processor shall dispose of the rejected material prior to obtaining written permission from the department. If the department fails to respond to a written request to dispose of rejected postfilled glass within 10 days of receipt of the request, the processor's request for disposal is deemed approved by the department.

(b) All rejected loads of postfilled containers shall be available and

subject to inspection by the department.

(c) All possible steps to avert the disposal of the loads of postfilled containers, as determined by the department, shall be taken by all glass container manufacturers and processors. All transactions or attempted transactions involving rejecting postfilled containers shall be thoroughly documented on the standardized rejection form pursuant to Section 14552.5. The glass container manufacturer and the certified processor are jointly and severally responsible for this effort.

SEC. 7. 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, except as provided in subdivision (d), 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, except as provided in subdivision (d), 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.

(d) The moneys deposited in the fund as the result of penalties paid for violations of Sections 14549, 14552.5, and 14552.51 may only be expended by the department upon appropriation by the Legislature.

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 1095

An act to add Article 4.2 (commencing with Section 18733) to Chapter 4 of Part 11 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) There are more than 3,100,000 functionally illiterate adults in California. The majority of these adults are able to speak, but not able to read or write, the English language.

(2) An adult's ability to function in our contemporary information age is critically and inextricably related to his or her literacy level and is of importance, therefore, both to the individual and to the whole of California society.

(3) The need for adult literacy development is long-term and is increasing more rapidly than the state's literacy service capability.

(4) The needs of illiterate adults are varied, and can best be met by a variety of approaches delivered through public and private organizations.

(5) Adult literacy development involves growth in many aspects of an individual's life and requires unique instructional strategies and assessment procedures.

(6) Knowledge about the extent of illiteracy in California and the means to address it requires ongoing expansion.

(7) The California Literacy Campaign has proven itself to be an effective program, and has made important progress toward the reduction of illiteracy by mobilizing public libraries of California as providers of individualized English language literacy instruction for adults.

(8) A partnership between state and local government has proven to be effective and necessary to provide adequate resources for library literacy services.

(b) It is the intent of the Legislature to codify and enhance the California Literacy Campaign in order to establish a public library English language literacy service for adults in California which will complement the activities of other public and private adult education programs.

SEC. 2. Article 4.2 (commencing with Section 18733) is added to Chapter 4 of Part 11 of the Education Code, to read:

Article 4.2. California Library Literacy Service

18733. The California Library Literacy Service is hereby established, as a public library services program designed to reduce adult illiteracy by providing English language literacy instruction and related services to adults and youth who are not enrolled in school. For purposes of this article, "English language literacy instruction" means the development of basic skills of reading and writing in the English language.

18733.1. (a) In order to be eligible for state funding under this article, a public library shall establish an adult literacy instructional program in accordance with this article, which shall provide adult basic literacy instruction and related services. Participant learning shall be evaluated on the basis of statewide guidelines established by the State Librarian.

(b) The public library shall do all of the following in establishing and implementing the program:

(1) Seek community and local government awarenes of and support for the program and develop a local commitment of resources for the program's continuation.

(2) Develop cooperative relationships with other local literacy service providers and participate in existing community adult literacy coalitions, in order to address the wide variety of literacy needs of the community and ensure an effective utilization of resources. The public library shall assist in the establishment of a community adult literacy coalition where none currently exists.

(3) Recruit and train volunteers to provide tutoring and other services in public library and other community settings.

18733.2. (a) Annually, the state board shall identify the program costs for which state funding apportioned under this article is authorized to be expended, based upon the stated purposes of this article and the amount of funding for those purposes made available by the Legislature. Annually, each public library seeking funding under this article for the subsequent fiscal year shall submit to the state board, for its review and approval, a plan of service describing its proposed operation of the adult literacy instructional program for the subsequent year, and a proposed budget for that program. The state board shall approve any submitted budget only to the extent the expenditures proposed by that budget qualify as program costs authorized under this subdivision.

(b) To the extent funding is made available by the Legislature for the purposes of this article, the State Librarian shall annually apportion, to each public library for which a plan of service and proposed budget are approved pursuant to subdivision (a), an amount equal to the following:

(1) For the first fiscal year of operation, 75 percent of the base

operating budget for the program.

(2) For the second fiscal year of operation, 100 percent of the base operating budget for the program.

(3) For the third fiscal year of operation, 100 percent of the base operating budget for the program.

(4) For the fourth fiscal year of operation, 75 percent of the base operating budget for the program.

(5) For the fifth fiscal year of operation, 50 percent of the base operating budget for the program.

(6) For the sixth, and each subsequent, fiscal year of operation, a percentage, not to exceed 100 percent, of the amount of private and local public moneys available to that public library for the purposes of this article. To determine that percentage for any fiscal year, the state board shall divide the result of subparagraph (A) by the result of subparagraph (B), as follows:

(A) The amount of the state funding appropriated for the fiscal year for the purposes of this article that remains after the apportionment of state funding for that fiscal year under paragraphs (1) to (5), inclusive.

(B) The total amount of private and local public moneys available for the purposes of this article for that fiscal year that are identified in the budgets submitted for that fiscal year by all public libraries seeking state funding under this article for their sixth, or subsequent, fiscal year of operation.

(c) For purposes of this section, "base operating budget" means the program budget approved by the state board for a public library for the initial year of operating that program. For the purposes of any of paragraphs (2) to (5), inclusive, of subdivision (b), the state board, at the request of any public library, may adjust the amount of the "base operating budget" for that library to the extent the board deems necessary, pursuant to documentation provided by that library, to appropriately reduce adult illiteracy in that community in accordance with this article.

18733.3. The State Library shall provide administrative support and technical assistance to public libraries in the development and operation of the adult literacy instructional programs conducted by public libraries pursuant to this article. In addition, the State Library shall conduct and coordinate services in support of those programs, including, but not limited to, the following:

(a) Research, and dissemination of research, on the prevalence and characteristics of adult illiteracy and the efficacy of various basic literacy instructional strategies and methodologies.

(b) Enhancement of public education and awareness regarding adult literacy.

(c) Training of tutors and of persons who train tutors.

(d) Training of public library literacy staff in volunteer recruitment and the management of volunteer programs.

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 reduce the critically high incidence of adult illiteracy in this state, and the current impact of that illiteracy on the state's economy, in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 1096

An act to amend Section 11550 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days or more than one year in the county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and, except as provided in subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in the county jail for at least 90 days. Other than as provided by subdivision (c), in no event shall the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in the county jail.

(b) Any person who (1) is convicted of violating subdivision (a) when the offense occurred within seven years of that person being convicted of two or more separate violations of that subdivision, and (2) refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subdivision (c), shall be punished by imprisonment in the county jail for not less than 180 days nor more than one year. In no event does the court have the power to absolve

a person convicted of a violation of subdivision (a) that is punishable under this subdivision from the obligation of spending at least 180 days in confinement in the county jail unless there are no licensed drug rehabilitation programs reasonably available.

For the purpose of this section, a drug rehabilitation program shall not be considered reasonably available unless the person is required to pay no more than the court determines that he or she is reasonably able to pay, in order to participate in the program.

(c) The court may, when it would be in the interest of justice, permit any person convicted of a violation of subdivision (a) punishable under subdivision (a) or (b) to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program.

In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subdivision, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(d) In addition to any fine assessed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(e) Notwithstanding subdivisions (a) and (b) or any other provision of law, any person who is unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense punishable by imprisonment in county jail for not exceeding one year or in state prison.

As used in this subdivision "immediate personal possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subdivision (e) is punishable upon the second and each subsequent conviction by imprisonment in the state prison for two, three, or four years.

(g) Nothing in this section prevents diversion of a person under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision

(b) or (c) of Section 243 of the Penal Code or with a violation of subdivision (e) shall be ineligible for diversion.

SEC. 2. The amendments to Section 11550 of the Health and Safety Code made by Section 1 of this act shall become operative on July 1, 1991.

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 1097

An act to amend Sections 2761, 2762, 2763, 2773, and 2774 of, to add Sections 2727.1, 2773.1, 2774.1, 2774.2, 2774.4, 2774.6, and 21151.7 to, and to repeal and add Sections 2207, 2770, and 2771 of, the Public Resources Code, relating to mining, and making an appropriation therefor.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 2207 of the Public Resources Code is repealed.

SEC. 2. Section 2207 is added to the Public Resources Code, to read:

2207. (a) The owner, lessor, lessee, agent, manager, or other person in charge of any mining operation of whatever kind or character within the state shall forward to the State Geologist not later than July 1, 1991, and every year thereafter not later than an anniversary date established by the State Geologist, upon forms which will be furnished by the board, a report which identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, State Geologist, or court.

(3) The location of the mining operation, its name, and starting with the 1992 report, its mine number as issued by the Bureau of

Mines or the State Geologist, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency, starting with the 1992 report.

(9) Proof of financial assurances, starting with the 1992 report.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) The person submitting the report pursuant to subdivision (a) shall forward to the lead agency, as defined in Section 2728, not later than July 1, 1991, and every year thereafter not later than the anniversary date established by the State Geologist, upon forms which will be furnished by the board, a report which provides all of the information specified in paragraphs (1) to (14), inclusive, of subdivision (a).

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether an appeal is pending in the case of a surface mining operator with vested rights under subdivision (b) of Section 2770, review of existing financial assurances pursuant to subdivision (c) of Section 2770 is pending, or an appeal is pending under subdivision (e) or (h) of Section 2770. The State Geologist shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (b) have been received, specify the anniversary date by which the mining operation shall submit reports

subsequent to 1991, specify the mining operation's mine number if one has not been issued by the Bureau of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the State Geologist and the lead agency. Any person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulations adopted by May 1, 1991, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation shall not exceed two thousand dollars ($2,000) annually and shall not be less than fifty dollars ($50) annually.

(2) The board shall adopt, by emergency regulations, a schedule of fees authorized under paragraph (1). In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan. For fiscal year 1991–92, the total revenue generated by the reporting fees established pursuant to paragraph (1) shall not exceed one million one hundred thirty-two thousand dollars ($1,132,000), which shall be adjusted in fiscal years 1992–93 and 1993–94 to reflect increases in the cost of living, as measured by the United States Department of Labor Consumer Price Index. Beginning in fiscal year 1994–95, the total revenue generated by the reporting fees for subsequent fiscal years shall not exceed a base of one million dollars ($1,000,000), as adjusted for the cost of living beginning with fiscal year 1991–92 and annually thereafter. Beginning in fiscal year 1992–93, the board shall automatically adjust the fees each fiscal year to conform with the revenue levels prescribed by this section and appropriated by the Legislature. If the department determines that the revenue collected during the preceding fiscal year was greater or less than the applicable base amount, plus the appropriate cost of living adjustments, the board shall adjust the fees to compensate for the over collection or under collection of revenues.

(3) The emergency regulations adopted pursuant to paragraph (2) or subsequent adjustments to the annual fees, shall be adopted by the board 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 shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(4) The reporting fees established pursuant to paragraph (1) shall

be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the department, State Geologist, or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the fund shall be available to the department, the State Geologist, and the board, upon appropriation by the Legislature, solely to carry out this section and Chapter 9 (commencing with Section 2710), and up to three hundred thousand dollars ($300,000) shall be available to the board upon appropriation by the Legislature to contract for preparation of the report required by Section 2774.6.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars ($100) or 10 percent of the amount due, which is greater, plus interest at the rate 1½ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations which have not submitted a report are required to submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means any operation as defined in Section 2735, unless excepted by Section 2714.

(g) Any information in reports submitted pursuant to subdivision (a) which includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation shall not be disclosed to any member of the public, as defined in subdivision (f) of Section 6252 of the Govenment Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same such figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30th or as soon thereafter as practicable.

SEC. 3. Section 2727.1 is added to the Public Resources Code, to read:

2727.1. "Idle" means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

SEC. 4. Section 2761 of the Public Resources Code is amended to read:

2761. (a) On or before January 1, 1977, and, as a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state which are urbanized or are subject to urban expansion or other irreversible land uses which would preclude mineral extraction:

(1) Standard metropolitan statistical areas and such other areas for which information is readily available.

(2) Other areas as may be requested by the board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the board, the State Geologist shall classify, on the basis solely of geologic factors, and without regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition which has been accepted by the board, or any other areas as may be specified by the board, as one of the following:

(1) Areas containing little or no mineral deposits.

(2) Areas containing significant mineral deposits.

(3) Areas containing mineral deposits, the significance of which requires further evaluation.

The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(c) The State Geologist shall transmit the information to the board for incorporation into the state policy and for transmittal to lead agencies.

SEC. 5. Section 2762 of the Public Resources Code is amended to read:

2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource

management policy previously reviewed by the board shall also require review and comment by the board.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any environmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

SEC. 6. Section 2763 of the Public Resources Code is amended to read:

2763. (a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract

minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

SEC. 7. Section 2770 of the Public Resources Code is repealed.

SEC. 8. Section 2770 is added to the Public Resources Code, to read:

2770. (a) Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

(b) Any person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, reclamation plans may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together were proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter.

(c) If a person with an existing surface mining operation has

received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, the lead agency shall administratively review those existing financial assurances in accordance with subdivision (d) prior to January 1, 1992. The review of existing financial assurances shall not be considered a project within the meaning of Division 13 (commencing with Section 21000).

(d) The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of existing financial assurances pursuant to subdivision (c) is limited to whether the plan or the existing financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but in any event the lead agency shall require that existing financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or existing financial assurances judged to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or existing financial assurances judged as not substantially meeting these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or existing financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (e) or (i), if the reclamation plan remains unapproved by July 1, 1990, or if the existing financial assurances remain unapproved by January 1, 1992, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.

(e) Any person who, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve existing financial assurances as required by subdivisions (c) and (d), may appeal that action or inaction to the board.

(f) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

(g) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or any longer period as may be mutually agreed upon by the board and the person filing the appeal. In hearing an appeal, the board shall only determine whether the reclamation plan or the financial assurances substantially meet the applicable requirements

of Sections 2772, 2773, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A reclamation plan or financial assurances judged to meet these requirements shall be approved. A reclamation plan or financial assurances judged not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the board, to correct the noted deficiencies and submit the revised reclamation plan or the revised financial assurances to the lead agency for review and approval.

(h) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project within the meaning of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(1) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(2) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

In any event, financial assurances required by Section 2773.1 shall remain in effect during the period the surface mining operation is idle. If the surface mining operation is still idle after expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the above requirements, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body,

which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the governing body.

Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in acccordance with the approved reclamation plan.

(i) Any enforcement action which may be brought against a person with an existing surface mining operation who has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, or a person who has filed an appeal with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h), shall be held in abeyance pending review of existing financial assurances pursuant to subdivision (c), or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

SEC. 9. Section 2771 of the Public Resources Code is repealed.

SEC. 10. Section 2771 is added to the Public Resources Code, to read:

2771. Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the board. The board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The board shall designate the public agency which shall serve as the lead agency, giving due consideration to the capability of the agency to fulfill adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility.

SEC. 11. Section 2773 of the Public Resources Code is amended to read:

2773. (a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and

sediment, and erosion control.

(b) By January 1, 1992, the board shall adopt regulations specifying minimum, verifiable statewide reclamation standards. Subjects for which standards shall be set include, but shall not be limited to, the following:

(1) Wildlife habitat.

(2) Backfilling, regrading, slope stability, and recontouring.

(3) Revegetation.

(4) Drainage, diversion structures, waterways, and erosion control.

(5) Prime and other agricultural land reclamation.

(6) Building, structure, and equipment removal.

(7) Stream protection.

(8) Topsoil salvage, maintenance, and redistribution.

(9) Tailing and mine waste management.

These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site.

SEC. 12. Section 2773.1 is added to the Public Resources Code, to read:

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e), which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the State Geologist. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the lead agency, and the State Geologist and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required

by the lead agency and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(b) If the lead agency or the board, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or the State Geologist shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or the State Geologist intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the State Geologist and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2).

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the State Geologist, that reclamation has been completed in accordance with the approved reclamation plan.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b). However, in cases where the board is not the lead agency pursuant to Section 2774.4, the State Geologist may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

(1) The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the State Geologist.

(2) The lead agency has been notified in writing by the State Geologist of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following has

occurred:

(A) The lead agency has been notified in writing by the State Geologist that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The State Geologist determines that there is a violation which amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the State Geologist in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

The State Geologist shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

(e) The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms may not include financial tests.

SEC. 13. Section 2774 of the Public Resources Code is amended to read:

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, in order to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause such an inspection to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the State Geologist within 30 days of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mine's compliance with this chapter and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has an appeal pending

in the case of a surface mining operator with vested rights under subdivision (b) of Section 2770, a review of existing financial assurances pending pursuant to subdivision (c) of Section 2770, or an appeal pending pursuant to subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice and any supporting documentation, including, without limitation, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the State Geologist for review. The lead agency shall certify to the State Geologist that the reclamation plan complies with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as in effect at the time the reclamation plan is submitted to the State Geologist for review.

(d) The State Geologist shall have 45 days to prepare written comments, if the State Geologist so chooses. The lead agency shall evaluate written comments received from the State Geologist during the 45-day comment period. The lead agency shall prepare a written response describing the disposition of the major issues raised. In particular, when the lead agency's position is at variance with the recommendations and objections raised in the State Geologist's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator.

(e) Lead agencies shall notify the State Geologist of the filing of an application for a permit to conduct surface mining operations within 30 days of such an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the State Geologist for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the State Geologist for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the State Geologist the information required under this section shall be cause for action under Section 2774.4.

SEC. 14. Section 2774.1 is added to the Public Resources Code, to read:

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the State Geologist determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or

the State Geologist may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the State Geologist's notification, the lead agency or the State Geologist may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the State Geologist, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or State Geologist determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) Any operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the State Geologist or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the State Geologist imposing an administrative penalty of not more than five thousand dollars ($5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the State Geologist. In determining the amount of the administrative penalty, the lead agency or the State Geologist shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the State Geologist within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the State Geologist shall be used for no purpose other than to cover the reasonable costs incurred by the State Geologist in implementing this chapter or Section 2207.

(d) If the lead agency or the State Geologist determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the State Geologist, may seek an order from a court of competent jurisdiction enjoining that operation.

(e) Upon a complaint by the State Geologist, the department, or

the board, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation issued pursuant to this chapter or Section 2207. The Attorney General may bring such an action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of competent jurisdiction compelling the operator to comply with this chapter and Section 2207.

(f) The lead agency shall have primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the State Geologist pursuant to this section only after the violation has come to the attention of the State Geologist and either of the following occurs:

(1) The lead agency has been notified by the State Geologist in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.

(2) The State Geologist determines that there is a violation which amounts to an imminent and substantial endangerment to the public health or safety, or to the environment.

The State Geologist shall comply with this section in initiating enforcement actions.

(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

SEC. 15. Section 2774.2 is added to the Public Resources Code, to read:

2774.2. (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the State Geologist, for review of the order. If the operator does not petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the State Geologist, and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the State Geologist setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, and payment of an administrative penalty, if any, shall be made to the lead agency or the State Geologist within 30 days, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator.

(e) Any operator aggrieved by an order of the legislative body or the board issued under subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. Any operator aggrieved by an order of a lead agency or State Geologist setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

SEC. 16. Section 2774.4 is added to the Public Resources Code, to read:

2774.4. (a) If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, or (5) intentionally misrepresented the results of inspections required under this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a) or (b), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to

the lead agency, the affected surface mining operators, and the public.

(d) Interested persons shall have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a) or (b), the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

(1) The action to be taken by the board.

(2) Why the board decided to take the action.

(3) Why the action is authorized by, and meets the requirements of, subdivision (a) or (b).

In addition, the findings shall address the significant issues raised, or written evidence presented, by interested persons or the board. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency or any interested person may obtain review of the board's action taken pursuant to subdivision (a) or (b) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. The evidence before the court, in reviewing the board's action, shall consist of the record before the board, and any other relevant evidence which, in the judgment of the court, is required to be considered to effectuate and implement the policies of this chapter. In every case, the court shall exercise its independent judgment on the evidence.

SEC. 17. Section 2774.6 is added to the Public Resources Code, to read:

2774.6. (a) On or before March 1, 1994, the board shall submit to the Governor and Legislature a report, prepared by a qualified consultant, which may include an educational institution, which evaluates the effectiveness of lead agencies and the department in implementing this chapter and Section 2207, and in meeting the intent of the Legislature as set forth in Section 2712. The report shall be prepared to the extent that funds are appropriated by the Legislature for this purpose. Prior to encumbering any funds for preparation of the report, the board may conduct a public hearing to receive and respond to public comments concerning the scope of issues to be addressed. The report shall include, but is not limited to, an evaluation of all of the following:

(1) Compliance with this chapter and Section 2207 by operators of surface mines, lead agencies, the State Geologist, the department, and the board.

(2) Compliance with reclamation requirements prescribed in Section 2773.

(3) The adequacy of resources needed to carry out this chapter and Section 2207.

(4) The adequacy of information available for purposes of preparing the report.

(5) Any recommended changes to administrative regulations or recommendations for further legislation.

(b) Prior to submitting the report to the Legislature, the board shall circulate for public review and comment a draft report, and shall direct the consultant to prepare a final report which incorporates or responds to the comments received.

SEC. 18. Section 21151.7 is added to the Public Resources Code, to read:

21151.7. Notwithstanding any other provision of law, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report for any open-pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2) and utilizes a cyanide heap-leaching process for the purpose of producing gold or other precious metals.

SEC. 19. The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated from the Strong-Motion Instrumentation Special Fund to the Department of Conservation as a loan for the initial costs incurred by the department between January 1, 1991, and June 30, 1991, in carrying out Chapter 9 (commencing with Section 2710) of the Public Resources Code. This amount shall be repaid by the department, during the three subsequent years, together with interest calculated at the rate received upon deposits held in the Pooled Money Investment Account, from funds deposited in the Mine Reclamation Account.

SEC. 20. 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 1098

An act to add Section 2954.7 to the Civil Code, relating to mortgages.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 2954.7 is added to the Civil Code, to read:

2954.7. Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to notes or evidence of indebtedness secured by a deed of trust or mortgage purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of the indebtedness, if a borrower so requests and the conditions established by paragraphs (1) to (5), inclusive, of subdivision (a) are met, a borrower may terminate future payments for private mortgage insurance, or mortgage guaranty insurance as defined in subdivision (a) of Section 12640.02 of the Insurance Code, issued as a condition to the extension of credit in the form of a loan evidenced by a note or other evidence of indebtedness which is secured by a deed of trust or mortgage on the subject real property.

(a) The following conditions shall be satisfied in order for a borrower to be entitled to terminate payments for private mortgage insurance or mortgage guaranty insurance:

(1) The request to terminate future payments for private mortgage insurance or mortgage guaranty insurance shall be in writing.

(2) The origination date of the note or evidence of indebtedness shall be at least two years prior to the date of the request.

(3) The note or evidence of indebtedness shall be for personal, family, household, or purchase money purposes, secured by a deed of trust or mortgage on owner-occupied, one to four unit, residential real property.

(4) The unpaid principal balance owed on the secured obligation that is the subject of the private mortgage insurance or mortgage guaranty insurance shall not be more than 75 percent, unless the borrower and lender or servicer of the loan agree in writing upon a higher loan to value ratio, of either of the following:

(A) The sale price of the property at the origination date of the note or evidence of indebtedness.

(B) The current fair market value of the property as determined by an appraisal, the cost of which shall be paid for by the borrower. The appraisal shall be ordered and the appraiser shall be selected by the lender or servicer of the loan.

(5) The borrower's monthly installments of principal, interest, and escrow obligations on the encumbrance or encumbrances

secured by the real property shall not have been more than 30 days past due over the 24-month period immediately preceding the request, provided further, that no notice of default has been recorded against the security real property pursuant to Section 2924, as a result of a nonmonetary default by the borrower (trustor) during the 24-month period immediately preceding the request.

(b) This section does not apply to any of the following:

(1) A note or evidence of indebtedness secured by a deed of trust or mortgage, or mortgage insurance, executed under the authority of Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code.

(2) Any note or evidence of indebtedness secured by a deed of trust or mortgage which is funded in whole or in part pursuant to authority granted by statute, regulation, or rule which, as a condition of that funding, prohibits or limits termination of payments for private mortgage insurance or mortgage guaranty insurance during the term of the indebtedness.

(3) Notes or evidence of indebtedness which require private mortgage insurance and were executed prior to January 1, 1991.

(c) If the note secured by the deed of trust or mortgage will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for private mortgage insurance or mortgage guaranty insurance shall be deemed in compliance with the requirements of this section.

(d) For the purposes of this section, "institutional third party" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of private mortgage insurance or mortgage guaranty insurance, which are the same or substantially the same as those utilized by the above-named institutions.

CHAPTER 1099

An act to amend Section 2954.6 of, and to add Section 2954.65 to, the Civil Code, relating to mortgage insurance.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 2954.6 of the Civil Code is amended to read:

2954.6. (a) If private mortgage insurance or mortgage guaranty insurance, as defined in subdivision (a) of Section 12640.02 of the

Insurance Code, is required as a condition of a loan secured by a deed of trust or mortgage on real property, the lender or person making or arranging the loan shall notify the borrower whether or not the borrower has the right to cancel the insurance. If the borrower has the right to cancel, then the lender or person making or arranging the loan shall notify the borrower in writing of the following:

(1) Any identifying loan or insurance information necessary to permit the borrower to communicate with the insurer or the lender concerning the insurance.

(2) The conditions that are required to be satisfied before the private mortgage insurance or mortgage guaranty insurance may be subject to cancellation, which shall include, but is not limited to, both of the following:

(A) If the condition is a minimum ratio between the remaining principal balance of the loan and the original or current value of the property, that ratio shall be stated.

(B) Information concerning whether or not an appraisal may be necessary.

(3) The procedure the borrower is required to follow to cancel the private mortgage insurance or mortgage guaranty insurance.

(b) The notice required in subdivision (a) shall be given to the borrower no later than 30 days after the close of escrow. The notice shall be set forth in at least 10-point bold type.

(c) With respect to any loan specified in subdivision (a) for which private mortgage insurance or mortgage guaranty insurance is still maintained, the lender or person making, arranging, or servicing the loan shall provide the borrower with a notice containing the same information as specified in subdivision (a) or a clear and conspicuous written statement indicating that (1) the borrower may be able to cancel the private mortgage insurance or mortgage guaranty insurance and (2) the borrower may contact the lender or person making, arranging, or servicing the loan at a designated address and telephone number to determine whether the borrower has a right of cancellation and, if so, the conditions and procedure to effect cancellation. The notice or statement required by this subdivision shall be provided in or with each written statement required by Section 2954.2. This subdivision shall become operative on January 1, 1992.

(d) The notice required under this section shall be provided without cost to the borrower.

(e) Any person harmed by a violation of this section may obtain injunctive relief and may recover treble damages and reasonable attorney's fees and costs.

(f) This section shall not apply to any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan nor to any insurance issued pursuant to Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code, or loans insured by the Federal Housing Administration or Veterans Administration.

SEC. 2. Section 2954.65 is added to the Civil Code, to read:

2954.65. Within 30 days after notice of cancellation from the insured, a private mortgage insurer or mortgage guaranty insurer shall, if the policy is cancellable, refund the remaining portion of the unused premium to the person or persons designated by the insured.

CHAPTER 1100

An act to amend Section 435 of the Military and Veterans Code, relating to state military forces.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 435 of the Military and Veterans Code is amended to read:

435. (a) The Director of General Services, with the approval of the Adjutant General, may lease for not more than 99 years or sell for fair market value upon terms and conditions and subject to any reservations and exceptions as may be determined to be in the best interests of the state any real property held for armory purposes. No real property shall be sold or lease entered into pursuant to this subdivision unless the Legislature, by statute, approves the sale or lease of the property.

(b) There is in the State Treasury the Armory Fund. All proceeds from the sale or lease of armories shall be deposited in the fund. The money in the fund is available, upon appropriation by the Legislature, for the acquisition or construction of new or replacement armories.

CHAPTER 1101

An act to amend Sections 2207, 2774, 2774.2, 2774.4, and 2774.6 of the Public Resources Code, relating to mining.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 2207 of the Public Resources Code, as added by Assembly Bill 3551 of the 1989–90 Regular Session, is amended to read:

2207. (a) The owner, lessor, lessee, agent, manager, or other person in charge of any mining operation of whatever kind or

character within the state shall forward to the State Geologist not later than July 1, 1991, and every year thereafter not later than an anniversary date established by the State Geologist, upon forms which will be furnished by the board, a report which identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, State Geologist, or court.

(3) The location of the mining operation, its name, and starting with the 1992 report, its mine number as issued by the Bureau of Mines or the State Geologist, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency, starting with the 1992 report.

(9) Proof of financial assurances, starting with the 1992 report.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) The person submitting the report pursuant to subdivision (a) shall forward to the lead agency, as defined in Section 2728, not later than July 1, 1991, and every year thereafter not later than the anniversary date established by the State Geologist, upon forms which will be furnished by the board, a report which provides all of the information specified in paragraphs (1) to (14), inclusive, of subdivision (a).

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether an appeal is pending in the case of a surface mining operator with vested rights under subdivision (b) of Section 2770, review of existing financial assurances pursuant to subdivision (c) of Section 2770 is pending, or an appeal is pending under subdivision (e) or (h) of Section 2770. The State Geologist shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (b) have been received, specify the anniversary date by which the mining operation shall submit reports subsequent to 1991, specify the mining operation's mine number if one has not been issued by the Bureau of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the State Geologist and the lead agency. Any person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulations adopted by May 1, 1991, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation shall not exceed two thousand dollars ($2,000) annually and shall not be less than fifty dollars ($50) annually.

(2) The board shall adopt, by emergency regulations, a schedule of fees authorized under paragraph (1). In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan. For fiscal year 1991–92, the total revenue generated by the reporting fees established pursuant to paragraph (1) shall not exceed one million one hundred thirty-two thousand dollars ($1,132,000), which shall be adjusted in fiscal years 1992–93 and 1993–94 to reflect increases in the cost of living, as measured by the United States Department of Labor Consumer Price Index. Beginning in fiscal year 1994–95, the total revenue generated by the reporting fees for subsequent fiscal years shall not exceed a base of one million dollars ($1,000,000), as adjusted for the cost of living beginning with fiscal year 1991–92 and annually thereafter. Beginning in fiscal year 1992–93, the board shall automatically adjust the fees each fiscal year to conform with the revenue levels prescribed by this section and appropriated by the Legislature. If the department determines that the revenue

collected during the preceding fiscal year was greater or less than the applicable base amount, plus the appropriate cost of living adjustments, the board shall adjust the fees to compensate for the over collection or under collection of revenues.

(3) The emergency regulations adopted pursuant to paragraph (2) or subsequent adjustments to the annual fees, shall be adopted by the board 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 shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(4) The reporting fees established pursuant to paragraph (1) shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the department, State Geologist, or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the fund shall be available to the department, the State Geologist, and the board, upon appropriation by the Legislature, solely to carry out this section and Chapter 9 (commencing with Section 2710), and up to three hundred thousand dollars ($300,000) shall be available to the department upon appropriation by the Legislature to contract for preparation of the report required by Section 2774.6.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars ($100) or 10 percent of the amount due, which is greater, plus interest at the rate 1½ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations which have not submitted a report are required to submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means any operation as defined in Section 2735, unless excepted by Section 2714.

(g) Any information in reports submitted pursuant to subdivision (a) which includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation shall not be disclosed to any member of the public, as defined in subdivision (f) of Section 6252 of the Govenment Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of

depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same such figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30th or as soon thereafter as practicable.

SEC. 2. Section 2774 of the Public Resources Code, as amended by Assembly Bill 3551 of the 1989–90 Regular Session, is amended to read:

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, in order to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause such an inspection to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the State Geologist within 30 days of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mine's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has an appeal pending in the case of a surface mining operator with vested rights under subdivision (b) of Section 2770, a review of existing financial assurances pending pursuant to subdivision (c) of Section 2770, or an appeal pending pursuant to

subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice and any supporting documentation, including, without limitation, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the State Geologist for review. The lead agency shall certify to the State Geologist that the reclamation plan complies with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as in effect at the time the reclamation plan is submitted to the State Geologist for review.

(d) The State Geologist shall have 45 days to prepare written comments, if the State Geologist so chooses. The lead agency shall evaluate written comments received from the State Geologist during the 45-day comment period. The lead agency shall prepare a written response describing the disposition of the major issues raised. In particular, when the lead agency's position is at variance with the recommendations and objections raised in the State Geologist's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator.

(e) Lead agencies shall notify the State Geologist of the filing of an application for a permit to conduct surface mining operations within 30 days of such an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the State Geologist for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the State Geologist for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the State Geologist the information required under this section shall be cause for action under Section 2774.4.

SEC. 3. Section 2774.2 of the Public Resources Code, as added by Assembly Bill 3551 of the 1989–90 Regular Session, is amended to read:

2774.2. (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the State Geologist, for review of the order. If the operator does not petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review

by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the State Geologist, and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the State Geologist setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the lead agency or the State Geologist within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) Any operator aggrieved by an order of the legislative body or the board issued under subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. Any operator aggrieved by an order of a lead agency or State Geologist setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

SEC. 4. Section 2774.4 of the Public Resources Code, as added by Assembly Bill 3551 of the 1989–90 Regular Session, is amended to read:

2774.4. (a) If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter,

(4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a) or (b), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the lead agency, the affected surface mining operators, and the public.

(d) Interested persons shall have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a) or (b), the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

(1) The action to be taken by the board.

(2) Why the board decided to take the action.

(3) Why the action is authorized by, and meets the requirements of, subdivision (a) or (b).

In addition, the findings shall address the significant issues raised, or written evidence presented, by interested persons or the board. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency or any interested person may obtain review of the board's action taken pursuant to subdivision (a) or (b) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. The evidence before the court, in reviewing the board's action, shall consist of the record before the board, and any other relevant evidence which, in the judgment of the court, is required to be considered to effectuate and implement the policies of this chapter. In every case, the court shall excerise its independent judgement on the evidence.

SEC. 5. Section 2774.6 of the Public Resources Code, as added by Assembly Bill 3551 of the 1989–90 Regular Session, is amended to

read:

2774.6. On or before March 1, 1994, the department shall submit to the Governor and Legislature a report, prepared by a qualified consultant, which may include an educational institution, which evaluates the effectiveness of lead agencies and the department in implementing this chapter and Section 2207, and in meeting the intent of the Legislature as set forth in Section 2712. The report shall be prepared to the extent that funds are appropriated by the Legislature for this purpose. Prior to encumbering any funds for preparation of the report, the board may conduct a public hearing to receive and respond to public comments concerning the scope of issues to be addressed. The report shall include, but is not limited to, an evaluation of all of the following:

(a) Compliance with this chapter and Section 2207 by operators of surface mines, lead agencies, the State Geologist, the department, and the board.

(b) Compliance with reclamation requirements prescribed in Section 2773.

(c) The adequacy of resources needed to carry out this chapter and Section 2207.

(d) The adequacy of information available for purposes of preparing the report.

(e) Any recommended changes to administrative regulations or recommendations for further legislation.

SEC. 6. Sections 1, 2, 3, 4, and 5 of this act shall only become operative if Assembly Bill 3551 of the 1989–90 Regular Session is enacted before this bill and adds Sections 2207, 2774.2, 2774.4, and 2774.6 to, and amends Section 2774 of, the Public Resources Code.

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. 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 1102

An act to amend Section 1861.03 of the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 1861.03 of the Insurance Code is amended to read:

1861.03. (a) The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Sections 51 to 53, inclusive, of the Civil Code), and the antitrust and unfair business practices laws (Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) of Division 7 of the Business and Professions Code).

(b) Nothing in this section shall be construed to prohibit (1) any agreement to collect, compile and disseminate historical data on paid claims or reserves for reported claims, provided such data is contemporaneously transmitted to the commissioner, (2) participation in any joint arrangement established by statute or the commissioner to assure availability of insurance, (3) any agent or broker, representing one or more insurers, from obtaining from any insurer it represents information relative to the premium for any policy or risk to be underwritten by that insurer, (4) any agent or broker from disclosing to an insurer it represents any quoted rate or charge offered by another insurer represented by that agent or broker for the purpose of negotiating a lower rate, charge, or term from the insurer to whom the disclosure is made, or (5) any agents, brokers, or insurers from utilizing or participating with multiple insurers or reinsurers for underwriting a single risk or group of risks.

(c) (1) Notwithstanding any other provision of law, a notice of cancellation or nonrenewal of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (A) nonpayment of premium; (B) fraud or material misrepresentation affecting the policy or insured; (C) a substantial increase in the hazard insured against.

(2) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance, from issuing an effective notice of nonrenewal based solely on the failure of the insured to maintain membership in the motor club. This subdivision shall also not prevent an insurer which issues private passenger automobile coverage to members of groups that were in

existence prior to November 8, 1988, whether membership, franchise, or otherwise, and to those who are not members of groups from issuing an effective notice of nonrenewal for coverage provided to the insured as a member of the group based solely on the failure of the insured to maintain that membership if (i) the insurer offers to renew the coverage to the insured on a nongroup basis, or (ii) to transfer the coverage to an affiliated insurer. The rates charged by the insurer or affiliated insurer shall have been adopted pursuant to this article. However, all of the following conditions shall be applicable to that insurance:

(A) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(B) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(C) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates subparagraphs (A), (B), or (C) shall be subject to the penalties set forth in Section 1861.14.

SEC. 2. The Legislature finds and declares that this act furthers the purpose of Proposition 103 by making available rate information that will promote competition.

CHAPTER 1103

An act to amend Section 53853 of the Government Code, relating to education.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 53853 of the Government Code is amended to read:

53853. (a) The note or notes shall be issued pursuant to a resolution authorizing the issuance thereof adopted by the legislative

body of the local agency, except that the note or notes of a county board of education, school district, or community college district that has not been accorded fiscal accountability status pursuant to Section 1080, 42647, 42650, or 85266 of the Education Code shall be issued in the name of the school district or community college district by the board of supervisors of the county, the county superintendent of which has jurisdiction over the school district or community college district, as soon as possible following receipt of a resolution of the governing board of the school district or community college district requesting the borrowing and the note or notes of a county board of education shall be issued in the name of the county board of education by the board of supervisors of the county as soon as possible following receipt of a resolution of the county board of education requesting that the county assist in that borrowing. The school district, community college district, or county board of education that submits that resolution to the county board of supervisors shall simultaneously provide a copy of the resolution to the county superintendent of schools and the county treasurer.

(b) Notwithstanding subdivision (a), if the appropriate county board of supervisors fails to authorize, by resolution, the issuance of a note or notes in the name of a county board of education, school district, or community college district as specified by that subdivision within 45 calendar days following its receipt of the resolution of the county board of education, or of the governing board of the school district or community college district, requesting that issuance, or if the county board of supervisors notifies the county board of education, school district, or community college district that it will not authorize that issuance within that 45-day period, then the note or notes may be issued by the county board of education, school district, or community college district in its name pursuant to the previously adopted resolution. The resolution adopted by the governing board of the school district or community college district, or by the county board of education, shall not contain direction to the county treasurer for the investment of any proceeds of the note or notes while deposited in the county treasury, but may direct the investment of proceeds of the note or notes held by a trustee and any other amounts held by that trustee or pledged for repayment or security of the note or notes. This subdivision applies only in the case of a note or notes of a county board of education, school district, or community college district to be issued in conjunction with a note or notes of one or more other county board of education, school district, or community college district. No county board of supervisors, county treasurer, or county auditor shall be deemed to have any fiduciary responsibility with regard to any note or notes issued pursuant to this subdivision. This subdivision shall not apply to a county board of education, school district, or community college district that is under the authority of a trustee as a result of accepting an emergency apportionment.

(c) Notes authorized to be issued may be issued from time to time

as provided in the resolution. The resolution of the county board of education, school district, or community college district shall set forth the form and the manner of execution of the note or notes.

CHAPTER 1104

An act to add Section 14035.6 to the Government Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) California's population is projected to increase to 36 million or more by 2010, an increase of approximately seven million people.

(2) California's major transportation systems are already congested, rely heavily on petroleum-fueled private passenger vehicles, and cause significantly increased air pollution in many areas of the state.

(3) Major studies presently in progress, pursuant to Chapter 197 of the Statutes of 1988 and Resolution Chapter 136 of the Statutes of 1988, are being conducted to study programs for the creation and development of the Los Angeles-Fresno-Bay Area/Sacramento high-speed rail corridor and the incremental development and improvement of the Auburn-Sacramento-Oakland-San Jose intercity rail corridor. However, these studies do not coordinate planning for these two rail corridors nor include the other commuter and intercity rail corridors specified in Sections 164.51 and 164.55 of the Streets and Highways Code.

(b) It is, therefore, the intent of the Legislature, in enacting Section 14035.6 of the Government Code, to provide overall coordination for rail corridor studies.

SEC. 2. Section 14035.6 is added to the Government Code, to read:

14035.6. (a) The department shall develop a work plan for a feasibility study for developing an integrated high-speed ground transportation system, as specified in subdivision (b).

(b) The department shall contract for a feasibility study of developing an integrated publicly or privately operated or a publicly and privately operated high-speed ground transportation system which includes the commuter and intercity rail corridors specified in Sections 164.51 and 164.55 of the Streets and Highways Code. The purpose of the study is to develop an integrated high-speed ground transportation system in California.

(c) The feasibility study shall include, but not be limited to, all of the following:

(1) An examination of existing and new technologies for a high-speed ground transportation system and recommendations for a technology to be employed which would allow travel times to be competitive with air travel.

(2) An examination of the adaptability of existing rail corridors to a high-speed ground transportation system and recommendations on the feasibility of expanding or upgrading existing rail corridors or developing a new ground transportation system.

(3) An economic analysis of a high-speed ground transportation system which includes projections on the numbers of persons who would use the system, the revenues expected to be generated, the costs of operating the system, and the impact on other modes of transportation, including capital outlay reductions for highways and airports.

(4) The environmental impacts of a high-speed ground transportation system, including the air quality benefits of a corresponding reduction in highway traffic.

(5) An examination of which segments of the system should be constructed first, together with recommendations for a construction schedule, including consideration of the scheduling and routing of vehicles to maximize coordination with existing rail systems, light rail, regional rail systems, other mass transit systems, airports, and other major transportation hubs.

(6) Recommendations for the administrative structure for operating a high-speed ground transportation system, including consideration of the creation of an operating division within the department, an independent state agency, or a public or private corporation and recommendations for an administrative structure which will efficiently and effectively administer the system while protecting the public need for quality service at least cost.

(7) An examination of the alternatives for financing a high-speed ground transportation system, including development of the proposed corridors; consideration of the granting of an exclusive franchise to a private corporation to construct and operate that system; and a consideration of the technology options, with separate consideration given to capital outlay and operational costs.

(d) For purposes of this study, the director shall appoint an advisory committee consisting of representatives from each of the following:

(1) Two members from each of the study groups organized for (A) the Los Angeles-Fresno-Bay Area/Sacramento High-Speed Rail Corridor study, (B) the Los Angeles-San Diego Corridor study and the Los Angeles-Santa Barbara Corridor study, and (C) the Auburn-Sacramento-Oakland-San Jose Rail Corridor Upgrade study.

(2) Two members from the California-Nevada Super Speed Ground Transportation Commission.

(3) One member each from the Southern California Association of Governments and the Metropolitan Transportation Commission.

(4) One member who is knowledgeable in high-speed rail

systems.

(5) The chairperson of the commission, or his or her designee selected from among the members of the commission.

(6) Any other persons the director determines are necessary to provide balance and expertise to the advisory committee. The advisory committee shall review and comment on the department's work plan for developing the feasibility study.

(e) The department shall incorporate into the feasibility study the findings, conclusions, and recommendations of the Los Angeles-Fresno-Bay Area/Sacramento High-Speed Rail Corridor Study Group, pursuant to Chapter 197 of the Statutes of 1988, the Los Angeles-San Diego study pursuant to Chapter 1313 of the Statutes of 1985, the Los Angles-Santa Barbara study pursuant to Chapter 1228 of the Statutes of 1988, the work of the California-Nevada Super Speed Ground Transportation Commission established pursuant to Chapter 149 of the Statutes of 1988, and of the Auburn-Sacramento-Oakland-San Jose rail corridor upgrade study conducted pursuant to Resolution Chapter 136 of the Statutes of 1988.

(f) The department shall proceed with the work plan and feasibility study pursuant to this section when funds are made available for that purpose.

(g) The completed work plan, cost estimates for the feasibility study, and recommendations of the advisory committee shall be submitted to the commission for its review and approval. The commission shall, after its review and approval, prepare and submit to the Legislature a report containing its recommendation for the amount of an appropriation necessary to conduct the feasibility study and a schedule for implementation of the study.

(h) The department shall, upon completion of the feasibility study, submit the feasibility study to the commission. The commission shall review and comment upon the feasibility study and return the study together with any comments to the department. The department shall incorporate the comments of the commission in the feasibility study and submit the study to the Governor and Legislature.

SEC. 3. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund to the department for development of the work plan and cost estimates for the feasibility study pursuant to Section 14035.6 of the Government Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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 1105

An act to amend Sections 51225.3 and 51226 of, and to add Section 52376 to, the Education Code, relating to vocational education.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990.]

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

SECTION 1. Section 51225.3 of the Education Code is amended to read:

51225.3. (a) Commencing with the 1988–89 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 to 12, inclusive, has not completed all of the following:

(1) At least the following numbers of courses in the subjects specified, each course having a duration of one year, unless otherwise specified.

(A) Three courses in English.

(B) Two courses in mathematics.

(C) Two courses in science, including biological and physical sciences.

(D) Three courses in social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics, and a one-semester course in economics.

(E) One course in visual or performing arts or foreign language. For the purposes of satisfying the requirement specified in this subparagraph, a course in American Sign Language shall be deemed a course in foreign language.

(F) Two courses in physical education, unless the pupil has been exempted pursuant to the provisions of this code.

(2) Such other coursework as the governing board of the school district may by rule specify.

(b) The governing board, with the active involvement of parents, administrators, teachers, and pupils, shall adopt alternative means for pupils to complete the prescribed course of study which may include practical demonstration of skills and competencies, supervised work experience or other outside school experience, vocational education classes offered in high schools, courses offered by regional occupational centers or programs, interdisciplinary study, independent study, and credit earned at a postsecondary institution. Requirements for graduation and specified alternative

modes for completing the prescribed course of study shall be made available to pupils, parents, and the public.

SEC. 2. Section 51226 of the Education Code is amended to read:

51226. (a) The Superintendent of Public Instruction shall coordinate the development, on a cyclical basis, of model curriculum standards for the course of study required by Section 51225.3 and for a vocational education course of study necessary to assist school districts with complying with subdivision (b) of Section 51228. The superintendent shall set forth these standards in terms of a wide range of specific competencies, including higher level skills, in each academic subject area. The superintendent shall review currently available textbooks in conjunction with the curriculum standards. The superintendent shall seek the advice of classroom teachers, school administrators, parents, postsecondary educators, and representatives of business and industry in developing these curriculum standards. The superintendent shall recommend policies to the State Board of Education for consideration and adoption by the board. The State Board of Education shall adopt these policies no later than January 1, 1985. However, neither the superintendent nor the board shall adopt rules or regulations for course content or methods of instruction.

The superintendent shall, to the extent applicable, incorporate the integration of vocational and academic education into the development of curriculum standards for vocational education courses. The standards for a vocational education course of study shall be adopted no later than May 1, 1991.

(b) Not less than every three years, the governing board of each school district shall compare local curriculum, course content, and course sequence with the standards adopted pursuant to subdivision (a).

SEC. 3. Section 52376 is added to the Education Code, to read:

52376. (a) The governing board of any school district that maintains a high school may expend supplemental funding apportioned pursuant to Section 54761 for the purposes of this section. Any governing board that expends supplemental grant funding pursuant to this section or accepts other funds made available for purposes of this section shall do all of the following:

(1) By May 1, 1991, establish procedures and policies required pursuant to subdivision (b).

(2) By July 1, 1992, establish a program required pursuant to subdivision (c).

(b) The governing board of each school district that elects to utilize supplemental grant funding or accept other funds for the purposes of this section shall do the following:

(1) Establish district policies and procedures to systematically review vocational education classes offered by the district to determine the degree to which each class may offer an alternative means for completing and receiving credit for specific portions of the district's prescribed course of study to graduate from high school.

The governing board shall ensure that those classes are equivalent, in terms of content and rigor, to the courses prescribed in subdivision (a) of Section 51225.3.

(2) Establish district policies and procedures to compare, not less than every three years, the local curriculum, course content, and course sequence of vocational education programs in the district with the state model curriculum standards for vocational education.

(c) Each governing board expending supplemental grant funding or accepting other funds made available for the purposes of this section shall develop and implement, in consultation with the regional occupational center or program and community college serving the geographic area of the school district, a vocational education program that meets at least the following criteria:

(1) Provides a series of vocational education programs, each of which offers a sequence of courses leading to specific competencies that will enable pupils to manage personal and work life and attain entry level employment in business or industry upon graduation from high school. The plan to provide a series of vocational education programs shall be consistent with local agreements with regional occupational centers and programs and community colleges regarding the responsibilities for the provision and articulation of services among those local agencies. Each governing board shall also develop and implement plans for articulation of vocational or technical courses, or both vocational and technical courses, with the community colleges to extend the sequence of courses through grades 13 and 14.

(2) Conducts or obtains access to needs data and assessment of local business and industry to ensure that the vocational education programs offered will prepare pupils in competencies for which employment opportunities exist.

(3) Provides counseling and guidance services to pupils to help them meet all necessary requirements for high school graduation and make informed career preparation choices. Counseling and guidance services provided to promote the purposes of this section may include counseling for pupils in grades 6 to 12, inclusive.

(4) Involves business and industry in cooperative projects with the schools to provide work experience opportunities, instructors from business and industry, assistance with needs assessments and program evaluations, and access to business and industry employment placement services.

(5) Provides access to employment placement services to help graduating pupils obtain employment.

(6) Includes a system of data collection to report annually to the governing board on the success or failure of each vocational education program in terms of all of the following:

(A) Pupils achieving the desired competencies.

(B) Pupils securing employment, particularly in jobs related to the area of their vocational preparation.

(C) Pupils proceeding to advanced education and training at the

postsecondary level.

(D) Number and types of vocational classes offered and the number of those classes that qualify as alternative means to complete the prescribed course of study pursuant to subdivision (b) of Section 51225.3.

(E) Number of pupils enrolled in vocational classes.

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 1106

An act to amend Section 6864.1 of the Business and Professions Code, and to amend Section 6254 of the Government Code, relating to collection agencies.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 6864.1 of the Business and Professions Code is amended to read:

6864.1. When a threat of physical harm is made or communicated to the bureau concerning a licensee or registrant, the bureau shall immediately notify the registrant or licensee of the threat and the name of the person making the threat.

All applications for registration or licensure pursuant to this chapter shall contain a statement, printed in 18-point type, consisting of the following language: "Pursuant to the California Public Records Act, your residence address may not be released to the public."

SEC. 2. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in

withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of

those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) The time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date and location of occurrence, the time and date of the report, the name, age and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, or 289 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, or 289 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with

the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code,

which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry concealed weapons issued by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

CHAPTER 1107

An act to add and repeal Article 5 (commencing with Section 447.50) to Part 1.95 of Division 1 of the Health and Safety Code, relating to allied health personnel.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

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

SECTION 1. Article 5 (commencing with Section 447.50) is added to Part 1.95 of Division 1 of the Health and Safety Code, to read:

Article 5. The Allied Health Professions Study

447.50. (a) The Legislature hereby finds and declares that many people in the state are denied access to health care due to the lack of sufficient health care providers in some urban and rural communities, especially medically underserved areas.

(b) The Legislature further finds and declares that one way of increasing access to health care for those living in these communities may be to encourage the increased use of allied health professionals, such as registered dieticians, physical therapists, and physicians' assistants. Allied health professionals are an underrecognized, but important, human health care resource.

(c) The Legislature further finds and declares that data and other information on the allied health professions and allied health professionals is unfortunately inadequate for serious policy-making purposes. While the value of allied health professionals is seldom disputed, there is a need for a study of the availability, need, utilization, and current distribution of these professionals, and other topics relevant to allied health professionals that could increase their use in the future, if appropriate.

447.51. For purposes of this article, "advisory committee" shall mean the advisory committee created pursuant to Section 389.36.

447.52. (a) The advisory committee shall conduct at least three public hearings at various locations throughout the state to study the current and potential role of allied health professionals in health care delivery, with an emphasis on their role in health care delivery in

medically underserved areas. The advisory committee shall solicit testimony from different professional organizations representing health professionals and allied health professionals to assure thorough input and the analysis of all available data and information.

(b) During the public hearings, the advisory committee shall at least do all of the following:

(1) Assess the current and future roles of allied health professionals in health care delivery in California.

(2) Identify the projected needs, if any, availability, and requirements of various types of health care delivery systems for each type of allied health professional.

(3) Investigate current practices under which each type of allied health professional obtains a license, credential, accreditation, or other authorization to practice.

(4) Assess changes necessary to meet the needs of the State of California, if any, in allied health programs, curricula, and personnel service delivery.

(5) Assess the ability of educational and health care institutions to make the necessary adjustments to help allied health professionals fulfill their potential in the future state health care delivery systems, including systems that provide services to people in their homes.

447.53. (a) The advisory committee shall prepare a report of its findings and recommendations and submit the report to the Governor and the Legislature on or before June 30, 1992.

(b) This article shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

CHAPTER 1108

An act to amend Section 68563 of the Government Code, relating to courts, and making an appropriation therefor.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

I am deleting the $125,000 appropriation contained in Section 2 of Assembly Bill No 3679

This bill would require the Judicial Council to conduct a comprehensive study of court interpreter utilization statistics, and report its findings to the Governor and the Legislature

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With this deletion, I approve Assembly Bill No 3679

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 68563 of the Government Code is amended to read:

68563. The Judicial Council shall collect, analyze, and publish pertinent interpreter utilization statistics, with commentary, and shall report such statistics to the Governor and to the Legislature not later than January 1, 1992. The Judicial Council shall prepare and submit such a report to the Legislature on January 1, every five years thereafter. Such information shall serve as a basis for determination of the need to establish interpreter programs in additional languages and the establishment of such programs through the normal budgetary process, and the determination of the ways in which the State Personnel Board can make available to the public, through public service announcements and otherwise, information relating to opportunities and requirements, testing, application procedures, and employment opportunities, and the establishment and evaluation of these programs through the normal budgetary process.

SEC. 2 There is hereby appropriated from the General Fund to the Judicial Council the sum of one hundred twenty-five thousand dollars ($125,000) for purposes of the initial report required pursuant to Section 1 of this act.

CHAPTER 1109

An act to add and repeal Article 3.3 (commencing with Section 25133) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste, and making an appropriation therefor.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 20, 1990]

I am deleting the $200,000 appropriation contained in Section 2(a) and the $200,000 appropriation contained in Section 2(b) of Senate Bill No 2111

This bill would require the Department of Health Services (DHS) to issue a grant to a qualified county to develop a pilot project environmental education program and to design and develop a collection system to dispose of hazardous waste generated by small quantity generators The bill would appropriate $400,000 for the grant, $200,000 from the Environmental License Plate Fund (ELPF), and $200,000 from the Hazardous Waste Control Account (HWCA)

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 1990, more than $54 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 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With these deletions, I approve Senate Bill No 2111

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Article 3.3 (commencing with Section 25133) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 3.3. Small Business Assistance Pilot Program

25133. The Legislature hereby finds and declares all of the following:

(a) The reduction and safe management of generated hazardous waste is a major public policy goal for the state since improper handling or illegal disposal of hazardous waste has contaminated our air, water, and soil and exposed the public to a serious hazard.

(b) Growing public attention and concern is being focused on the disposal of small amounts of hazardous waste into the environment.

(c) There are an estimated 53,000 small quantity generators that produce an estimated 10 percent or more of the total hazardous waste generated in California.

(d) The cost to small business to legally dispose of hazardous waste is tremendously high.

(e) A large volume of hazardous waste generated by small quantity generators has been and is being illegally disposed of, in solid waste disposal facilities and into the environment.

(f) The diversion of hazardous waste from these solid waste disposal facilities would contribute to reducing the risks of hazardous chemicals being discharged into the groundwater.

(g) The key reasons behind improper disposal of hazardous waste relate primarily to the lack of resources to enforce hazardous waste regulations, unfamiliarity with hazardous waste regulations, lack of education on environmental impacts, and the high costs of proper disposal.

(h) There is a need to explore effective alternatives to traditional regulatory enforcement to encourage the proper management of generated hazardous waste.

(i) A study entitled "Managing Hazardous Wastes Produced by Small Quantity Generators," prepared by the Division of Environmental Studies at the University of California at Davis, in cooperation with the Senate Office of Research, and hearings conducted by the Senate Select Committee on Small Business, found that an environmental education program and a collection system could be designed and developed to provide vital information and an economic incentive to encourage legal disposal of generated hazardous waste.

(j) It is the intent of this article to promote the reduction of hazardous waste at the source, and whenever source reduction is not feasible or practicable, to encourage recycling.

25133.1. For purposes of this article, the following definitions apply:

(a) "Applicant" means a county which has adopted a resolution that gives approval to seek project funds.

(b) "Small quantity generator," or "SQG" means a small business, as defined in Section 14837 of the Government Code, that generates more than 100 kilograms, but less than 1,000 kilograms, of hazardous waste per month.

25133.2. (a) The department shall establish and administer, until December 1, 1993, a small business assistance pilot project by issuing a grant to a county, to develop a pilot project which will incorporate the hazardous waste management priorities specified in Section 25179.4 and which will accomplish all of the following:

(1) Reduce the generation of hazardous waste by SQGs. When it is not feasible to reduce or recycle hazardous waste subject to the pilot program, the hazardous waste shall be managed in compliance with the requirements of this chapter to minimize the present and future threat to health and the environment.

(2) Develop an environmental education program, in cooperation with the department, to provide practical information on all applicable state and federal hazardous waste regulations. The program shall include information on waste reduction, recycling, and SQGs, responsibilities for safely managing hazardous waste as well as the impacts hazardous waste generated could have on the environment.

(3) Design and develop a collection system to assist small business to legally dispose of hazardous waste which cannot otherwise be reduced.

(4) Prevent the illegal disposal of hazardous waste generated by small business in solid waste disposal facilities and into the environment.

(5) Identify and list categories of hazardous waste generated by specific industries in the county, which qualify as SQGs and which are potential candidates for the collection system for generated hazardous waste.

(b) The department shall give preference in awarding the grant to a county which indicates commitment to continue the project after state funding has expired. The grant amount shall be four hundred thousand dollars ($400,000). The department may expend up to 10 percent of the grant to administer the pilot project. These funds shall be used for purposes set forth in subdivision (a). The cost of transportation, storage, and treatment shall be paid by the participating SQGs and the county may use up to 40 percent of grant funds appropriated by this act from the Hazardous Waste Control Account to subsidize the cost of collection of hazardous waste.

25133.3. An applicant for a grant specified in Section 25133.2 shall submit to the department all of the following:

(a) A description of the project.

(b) The estimated number of small quantity generators that will be included in the project.

(c) A plan of operation that includes assurance of compliance with

applicable state and federal regulations concerning hazardous waste.

(d) A budget which includes estimates of the design and implementation costs of the project.

(e) A description of the environmental education program.

(f) A resolution by the applicant's governing body that gives approval to seek funds.

25133.4. A county shall submit the grant application for the pilot project to the department on or before May 1, 1991. The department shall evaluate each grant application for its potential to satisfy the requirements specified in Section 25133.2 and shall award the grant based on the evaluation. The department shall notify the applicant of the approval or denial of the grant application by October 1, 1991.

25133.5. (a) On or before October 1, 1993, the grant recipient shall submit to the department a report describing the implementation of the small business assistance pilot project and the extent to which the program was successful in addressing the problem of the illegal disposal of hazardous waste and related matters set forth in subdivision (a) of Section 25133.2. The report shall include all of the following information:

(1) The procedures developed and used by the county in the selection and targeting of small quantity generators.

(2) The materials developed and used by the county in the environmental education program for small quantity generators.

(3) An account of the total number of small quantity generators who could participate in the pilot project.

(4) An account of the total hazardous waste generated by type and waste stream for each targeted small quantity generator that participates in the project.

(5) A determination if the project was successful in obtaining the participation of 20 percent or more of the identified SQGs in the pilot program and, of those participating, if at least 10 percent of their hazardous waste is either reduced or recycled.

(6) An identification of waste minimization technologies applied in the project, including an indication of their effectiveness.

(7) A description of measures taken by the county to continue the program.

(b) On or before December 1, 1993, the department shall convey to the Legislature the report received pursuant to subdivision (a), together with recommendations for the use of the program for applicability to counties throughout the state.

25133.6. 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 enacted before January 1, 1994, deletes or extends that date.

SEC. 2. (a) The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the California Environmental License Plate Fund to the State Department of Health Services for the purpose of implementing paragraph (2) of subdivision (a) of Section 25133.2 of the Health and Safety Code.

(b) The sum of two hundred thousand dollars ($200,000) is hereby

appropriated from the Hazardous Waste Control Account to the State Department of Health Services for the purpose of implementing paragraph (3) of subdivision (a) of Section 25133.2 of the Health and Safety Code.

(c) No grant shall be made by the State Department of Health Services pursuant to Section 25133.2 of the Health and Safety Code from funds appropriated pursuant to subdivision (a), unless an amount equal to one dollar ($1) for every two dollars ($2) of the grant is made available to the applicant from other public or private sources, including federal agencies, for the pilot project.

CHAPTER 1110

An act to add Article 3.5 (commencing with Section 12960) to Chapter 2 of Division 3 of, and to repeal Sections 12922, 12922.1, 12922.5, 12922.7, 12958, and 12997 of, the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990]

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

SECTION 1. Section 12922 of the Insurance Code is repealed.

SEC. 2. Section 12922.1 of the Insurance Code is repealed.

SEC. 3. Section 12922.5 of the Insurance Code is repealed.

SEC. 3.5. Section 12922.7 of the Insurance Code is repealed.

SEC. 4. Section 12958 of the Insurance Code is repealed.

SEC. 5. Article 3.5 (commencing with Section 12960) is added to Chapter 2 of Division 3 of the Insurance Code, to read:

Article 3.5. Reporting

12960. The commissioner shall, on or before the first day of August in each year, make a report to the Governor, through the Secretary of Business, Transportation, and Housing. The report shall contain a tabular statement and synopses of the reports which have been filed in his or her office and show, generally, the condition of the insurance business and interests in this state, and other matters concerning insurance. The report shall also contain a detailed verified statement, of the moneys and fees of office received by the commissioner, and for what purpose.

12961. (a) The commissioner shall provide the Legislature with an annual report analyzing the following types of actions:

(1) Medical malpractice actions.

(2) Toxic substance tort actions.

(3) Product and design liability actions.

(4) Tort actions in which a public entity is a defendant.

(5) Tort actions involving judgments or settlements of one million dollars ($1,000,000) or more.

(6) Class action tort actions.

(7) Defamation and invasion of privacy actions.

(8) Other categories of tort actions involving commercial liability claims as the commissioner deems necessary.

(b) The study may exclude actions in which the only defendant is an individual sued in his or her private capacity. The study may exclude actions filed in municipal court.

(c) If any of the information required to be provided by the parties is confidential under any other provision of law or pursuant to any court order, the commissioner shall keep that information confidential and shall limit its analysis of that information to aggregate data or other analyses which will not reveal the identity of the parties.

12962. The commissioner shall make an annual report to the Legislature and to the Governor on or before October 1. The report shall include an analysis of the information required by Sections 674.5, 1857.7, 1857.9, 1864, 11555.2, and 12963, including, but not limited to, all of the following:

(a) An aggregate and an average for all insurers for each item of information required by these sections.

(b) The number of insurers reporting policies written for each class during the calendar year.

(c) For each class, the number of insurers reporting a combined loss ratio of 100 percent or more, and the number reporting a combined loss ratio of under 100 percent.

(d) An analysis of adjustments made to loss reserves for prior years.

(e) The change in any item required to be included by subdivisions (a) to (d), inclusive, from the immediately prior year.

The requirements of this section shall be satisfied if the analysis required by this section is included in the annual report to the Governor required by Section 12960, and a copy of that report is provided to the Legislature.

12963. (a) There is in the office of the commissioner the local government information and statistical analysis section which shall collect relevant data received from insurers pursuant to subdivision (b) in order that public entities will be able to assess past insurance programs and to consider alternatives to full insurance coverage.

(b) Each insurer transacting insurance, as defined in Sections 108 and 116, covering liability for any public entity, as defined in Section 811.2 of the Government Code, where the public entity is the named insured, shall report the following data to the commissioner by type of claim, on a date not later than July 1 of each calendar year:

(1) The total number of insureds written during the immediately preceding calendar year.

(2) The total amount of premiums received from insureds, both written and earned (as reported in the annual statement), during

the immediately preceding calendar year.

(3) The number of claims reported to the insurer for the first time separately by the year the claim occurred, and, the number of claims reported closed during a previous calendar year which were reopened separately by the year the claim occurred.

(4) The total number of claims outstanding, together with the monetary amount reserved for loss and allocated loss expense, in the annual statement as of December 31 of the immediately preceding calendar year, separately stated by the year the claim occurred.

(5) (A) The number of claims closed with payment to the claimant during the immediately preceding calendar year, to be reported by the year the claim occurred, (B) the total monetary amount paid thereon, reported by the year the claim occurred, and (C) the total allocated loss expense paid thereon, reported by the year the claim occurred.

(6) The monetary amount paid on claims during the immediately preceding calendar year, to be reported separately by the year the claim occurred, with allocated loss expense paid, to be reported separately by the year the claim occurred.

(7) The number of claims closed without payment to the claimant during the immediately preceding calendar year, by the year the claim occurred, and the allocated loss expense paid thereon, separately by the year the claim occurred.

(8) The monetary amount reserved in the annual statement for the immediately preceding calendar year on claims incurred but not reported to the insurer.

(9) The number of lawsuits filed against the insurers insureds during the immediately preceding calendar year, to be separately reported by the year the claim occurred.

(10) A distribution by size of payment for those claims closed during the immediately preceding calendar year, showing the number of claims and total amount paid for each monetary category, as determined by the commissioner.

As used in this section, the type of claims to be reported shall include, but not be limited to, workers' compensation, liability, personal injury other than automobile, property damage other than automobile liability, liability based upon the dangerous condition of public property, and other general liability claims.

12964. The Bureau of Fraudulent Claims shall annually compile and report, as a part of the commissioner's annual report required by Section 12960, the following information:

(a) The number of cases reported to the bureau pursuant to Article 6 (commencing with Section 13000).

(b) The number of cases rejected wherein an investigation was not initiated by the bureau due to insufficient evidence to proceed and the number of cases rejected wherein an investigation was not initiated by the bureau due to any other reason.

12965. The data and other information required to be filed or reported under this article may be transmitted by electronic media

or data transmision to the receiver's electronic data processing system.

SEC. 6. Section 12997 of the Insurance Code is repealed.

SEC. 7. The Legislature intends by this act to provide for consolidation of certain reporting requirements to ensure that they can be more readily identified and to provide for the transmission of the required information or data by more efficient means.

CHAPTER 1111

An act to amend Sections 13146 and 17958.5 of, to add Sections 13143.2, 13143.5, and 13869.7 to, and to repeal Section 17920.7 of, the Health and Safety Code, relating to building standards.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. This act shall be known and may be cited as the Green-Hansen Fire Safety Act of 1990.

SEC. 2. Section 13143.2 is added to the Health and Safety Code, to read:

13143.2. (a) Except as provided in Section 18930, the State Fire Marshal shall adopt, amend, and repeal fire safety rules and regulations, and, except as otherwise provided in this part and Part 1.5 (commencing with Section 17910) of Division 13, the State Fire Marshal shall enforce building standards published in the California Building Standards Code and those other rules and regulations adopted by the State Fire Marshal for the provision of structural fire safety and fire-resistant exits in multiple-story structures existing on January 1, 1975, let for human habitation, including, and limited to, apartment houses, hotels, and motels wherein rooms used for sleeping are let above the ground floor. The State Fire Marshal shall adopt, amend, or repeal, and shall submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13. The rules and regulations and building standards shall provide adequate safety to the occupants and the general public, and shall be consistent with the requirements contained in subdivisions (d), (e), (f), (g), (h), (i), (k), and (*l*) of Section 1215 of Part 2 of the California Building Standards Code, 1990 edition, or similar successor standards of the California Building Standards Code.

Except as provided in Section 18930, the department, with the written approval of the State Fire Marshal, may allow reasonable exceptions to subdivisions (e) and (g) of Section 1215 of Part 2 of the California Building Standards Code, 1990 edition, or similar successor standards of the California Building Standards Code, to permit the

continued use of existing stairs and to subdivision (*l*) of Section 1215 to permit equivalent protection in lieu of occupancy separations. However, the exceptions shall not impair occupant safety and shall be consistent with the legislative intent of this section.

The building standards adopted by the State Fire Marshal and submitted for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 shall not require that interior stairs and vertical openings be enclosed in two-story buildings.

(b) Notwithstanding subdivision (a), any city, county, or city and county may adopt building standards for structural fire safety and fire-resistant exits in structures subject to this section. However, those building standards shall be substantially equivalent in fire safety to, or more stringent in fire safety than, the building standards published in the California Building Standards Code. Each city, county, or city and county adopting alternative standards shall submit a detailed statement, with supporting data, to the State Fire Marshal of the alternate standards to the state building standards and other regulations adopted by the State Fire Marshal. The State Fire Marshal shall make a finding as to whether the alternative local standards are equivalent to the requirements of the California Building Standards Code. It is the intention of the Legislature that the building standards adopted and published in the California Building Standards Code shall be consistent with the requirements for new construction contained in the Uniform Building Code, 1988 edition, as adopted by the International Conference of Building Officials or similar successor standards adopted in accordance with Section 18928, except as otherwise required by state or federal law.

(c) This section shall not apply to any apartment house, hotel, or motel existing on May 14, 1979, having floors, as measured from the top of the floor surface, used for human occupancy located more than 75 feet above the lowest floor level having building access which is subject to Chapter 3 (commencing with Section 13210) of Part 2 of Division 12 relating to high rise buildings existing on May 14, 1979.

(d) The enforcement agency shall make inspections to the extent necessary to identify the structures within its jurisdiction in violation of the rules and regulations adopted pursuant to this section, and all structures subject to this section shall be conformed to the requirements contained in those regulations.

(e) All structures governed by Part 2.7 (commencing with Section 18950) of Division 13 are exempt from the permissive authority granted by subdivision (b).

SEC. 3. Section 13143.5 is added to the Health and Safety Code, to read:

13143.5. (a) Notwithstanding Part 2 (commencing with Section 13100) of Division 12 of Part 1.5 (commencing with Section 17910) of Division 13, and Part 2.5 (commencing with Section 18901) of Division 13, any city, county, or city and county may, by ordinance, make changes or modifications that are more stringent than the requirements published in the California Building Standards Code

relating to fire and panic safety and the other regulations adopted pursuant to this part. The adopted standards shall be reasonably necessary because of local climatic, geological, or topographical conditions. Before adopting the ordinance, the city, county, or city and county shall make an express finding that the ordinance is reasonably necessary because of local climatic, geological, or topographical conditions. The finding shall be available as a public record. A copy of the findings, together with the modification or change expressly marked and identified to which each finding refers, shall be filed with the Department of Housing and Community Development.

(b) Nothing in this section shall authorize a local jurisdiction to mandate, nor prohibit a local jurisdiction from mandating, the installation of residential fire sprinkler systems within newly constructed dwelling units or in new additions to existing dwelling units, including, but not limited to, manufactured homes as defined in Section 18007.

(c) Nothing in this section shall authorize a local jurisdiction to mandate, nor prohibit a local jurisdiction from mandating, the retrofitting of existing dwelling units for the installation of residential fire sprinkler systems, including, but not limited to, manufactured homes as defined in Section 18007.

(d) Nothing in this section shall apply in any manner to litigation filed prior to January 1, 1991, regarding an ordinance or regulation which mandates the installation of residential fire sprinkler systems within newly constructed dwelling units or new additions to existing dwelling units.

(e) This section shall not apply to fire and panic safety requirements for the public schools adopted by the State Fire Marshal pursuant to Section 13143

(f) The same agency or entity to whom authority to enforce building standards not related to fire and panic safety is delegated by the city, county, or city and county with jurisdiction in the area affected by the building standards shall enforce any building standard adopted pursuant to this section.

(g) On or before October 1, 1991, and each October 1 thereafter, the Department of Housing and Community Development, in conjunction with the office of the State Fire Marshal, shall transmit a report to the State Building Standards Commission on the more stringent requirements, adopted by a city, county, or city and county, pursuant to this section or adopted by a fire protection district and ratified pursuant to Section 13869.7, to the building standards relating to fire and panic safety adopted by the State Fire Marshal and contained in the California Building Standards Code. The report shall be for informational purposes only and shall include a summary by the department and the office of the reasons cited as the necessity for the more stringent requirements. The report required pursuant to this subdivision shall apply to any more stringent requirements adopted or ratified on or after January 1, 1991.

(h) All structures governed by Part 2.7 (commencing with Section 18950) of Division 13 are exempt from the permissive authority granted by subdivision (a).

SEC. 4. Section 13146 of the Health and Safety Code is amended to read:

13146. The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:

(a) The same agency or entity to whom authority to enforce building standards not related to fire and panic safety is delegated by the city, county, or city and county with jurisdiction in the area affected by the building standard shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal as they relate to R-3 occupancies, as defined in Section 1201 of Part 2 of the California Building Standards Code.

(b) The chief of any city or county fire department or of any fire district, and their authorized representatives, shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal, except those described in subdivision (a) or (d).

(c) The State Fire Marshal shall have authority to enforce such building standards and other regulations of the State Fire Marshal in areas outside of corporate cities and districts providing fire protection services.

(d) The State Fire Marshal shall have authority to enforce such building standards and other regulations of the State Fire Marshal in corporate cities and districts providing fire protection services upon request of the chief fire official or the governing body.

SEC. 5. Section 13869.7 is added to the Health and Safety Code, to read:

13869.7. (a) Any fire protection district organized pursuant to Part 2.7 (commencing with Section 13800) of Division 12 may adopt building standards relating to fire and panic safety that are more stringent than those building standards adopted by the State Fire Marshal and contained in the California Building Standards Code. For these purposes, the district board shall be deemed a legislative body and the district shall be deemed a local agency. The adopted building standards shall be reasonably necessary because of local climatic, geological, or topographical conditions. Before adopting the ordinance, the district shall make an express finding that the ordinance is reasonably necessary because of local climatic, geological, or topographical conditions. The findings shall be available as a public record.

(b) Any fire protection district that proposes to adopt an ordinance pursuant to this section shall, not less than 30 days prior to noticing a proposed ordinance for public hearing, provide a copy of that ordinance, together with the adopted findings made pursuant to subdivision (a), to the city, county, or city and county where the ordinance will apply. The city, county, or city and county, may

provide the district with written comments, which shall become part of the fire protection district's public hearing record.

(c) The fire protection district shall transmit the adopted ordinance to the city, county, or city and county where the ordinance will apply. The legislative body of the city, county, or city and county, may ratify, modify, or deny an adopted ordinance and transmit its determination to the district within 15 days of the determination. Any modification or denial of an adopted ordinance shall include a written statement describing the reasons for any modifications or denial. No ordinance adopted by the district shall be effective until ratification by the city, county, or city and county where the ordinance will apply. Upon ratification of an adopted ordinance, the city, county, or city and county, shall file a copy of the findings of the district, and any findings of the city, county, or city and county, together with the adopted ordinance expressly marked and identified to which each finding refers, with the Department of Housing and Community Development.

(d) Nothing in this section shall authorize a district to mandate, nor prohibit a district from mandating, the installation of residential fire sprinkler systems within newly constructed dwelling units or in new additions to existing dwelling units, including, but not limited to, manufactured homes as defined in Section 18007.

(e) Nothing in this section shall authorize a district to mandate, nor prohibit a district from mandating, the retrofitting of existing dwelling units for the installation of residential fire sprinkler systems, including, but not limited to, manufactured homes as defined in Section 18007.

(f) Nothing in this section shall apply in any manner to litigation filed prior to January 1, 1991, regarding an ordinance or regulation which mandates the installation of residential fire sprinkler systems within newly constructed dwelling units or in new additions to existing dwelling units.

(g) This section shall not apply to fire and panic safety requirements for the public schools adopted by the State Fire Marshal pursuant to Section 13143.

(h) The same agency or entity to whom authority to enforce building standards not related to fire and panic safety is delegated by the city, county, or city and county with jurisdiction in the area affected by the building standard shall enforce any building standard adopted pursuant to this section.

SEC. 6. Section 17920.7 of the Health and Safety Code is repealed.

SEC. 7. Section 17958.5 of the Health and Safety Code is amended to read:

17958.5. (a) Except as provided in Section 17922.6, in adopting the ordinances or regulations pursuant to Section 17958, a city or county may make such changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 as it determines, pursuant to the provisions of Section

17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions.

For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions.

(b) On or before October 1, 1991, and each October 1 thereafter, the department, in conjunction with the office of the State Fire Marshal, shall transmit a report to the State Building Standards Commission on the modifications and changes made by cities and counties to the building standards published in the California Building Standards Code, and on the more stringent requirements adopted by a city, county, or city and county pursuant to Section 13143.5, or adopted by a fire protection district and ratified pursuant to Section 13869.7, to the building standards relating to fire and panic safety adopted by the State Fire Marshal and contained in the California Building Standards Code. The report shall be for informational purposes only and shall include a summary by the department and the office of the reasons cited as the necessity for the modifications, changes, and more stringent fire and panic safety requirements. The report required pursuant to this section shall apply to modifications, changes, and more stringent fire and panic safety requirements adopted or ratified on or after January 1, 1991.

SEC. 8. This act shall not becme operative unless Senate Bill 1830 of the 1989–90 Regular Session is chaptered.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs. 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 1112

An act to amend Sections 29009 and 29124 of, to amend and renumber Sections 29090, 29091, and 29092 of, to add Section 29126.2 to, and to repeal Section 29131 of, the Government Code, relating to local government.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 29009 of the Government Code is amended to read:

29009. In the proposed and final budgets the budgetary requirements shall equal the available financing.

SEC. 2. Section 29090 of the Government Code is amended and renumbered to read:

29092. The board may set forth appropriations in greater detail than required in Section 29089 or 29091 and may authorize any additional controls for the administration of the budget as it deems necessary; the board may designate a county official to exercise these administrative controls.

SEC. 3. Section 29091 of the Government Code is amended and renumbered to read:

29090. The adoption of the budget may be accomplished by a resolution in which the adoption is effectuated by reference to the financing requirements in the budget as finally determined, provided that the minimum requirements set forth in Section 29089 are met in the budget document. If adopted by reference, the budget shall have the same effect and be subject to the same provisions of law as if the resolution of adoption had been accomplished by specific designation.

SEC. 4. Section 29092 of the Government Code is amended and renumbered to read:

29091. The several amounts of proposed financing uses specified in the resolution as finally adopted are thereby appropriated at the object level except for fixed assets, which are appropriated at the subobject level as referenced in Section 29008 for the various budget units of the county and for the special districts for the period to which the budget is intended to apply.

SEC. 5. Section 29124 of the Government Code is amended to read:

29124. If at the beginning of any fiscal year, the appropriations applicable to that year have not been finally determined and adopted, the auditor shall approve payments for the support of the various budget units in accordance with the following authorizations:

(a) Except as otherwise provided in subdivision (b), the several amounts set forth in the proposed budget for the objects and

purposes therein specified, except obligations for fixed assets, residual equity transfers, and for new permanent employee positions, are deemed appropriated until the adoption of the final budget.

(b) Obligations for fixed assets, residual equity transfers, and for new permanent employee positions are deemed appropriated until the adoption for the final budget if specifically approved by the board. For the purposes of this subdivision, the words "new permanent employee positions" do not include any employee positions created in lieu of an employee position which is abolished.

(c) If the proposed budget has not been approved by the board, the amounts deemed appropriated shall be based on the budget of the preceding year, excluding fixed assets and residual equity transfers unless specifically approved by the board.

SEC. 6. Section 29126.2 is added to the Government Code, to read:

29126.2. The auditor may review and issue reports and make recommendations regarding estimated available financing, or actual available finanacing, or both, and the status of appropriations. The auditor shall submit to the board, and any other official the board may designate, a statement showing this information with respect to the condition of each separate budget appropriation and to the condition of estimated available financing, as the board requires.

SEC. 7. Section 29131 of the Government Code is repealed.

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 1113

An act to repeal Section 33420.5 of, and to add Article 12.5 (commencing with Section 33459) to Chapter 4 of Part 1 of Division 24 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 19, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 33420.5 of the Health and Safety Code is repealed.

SEC. 2. Article 12.5 (commencing with Section 33459) is added to Chapter 4 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 12.5. Hazardous Substance Release Cleanup

33459. For purposes of this article, the following definitions shall apply:

(a) "Department" means the State Department of Health Services.

(b) "Hazardous substance" means any hazardous substance as defined in subdivision (f) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance as defined in this subdivision.

(c) "Qualified independent contractor" means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(d) "Release" means any release, as defined in Section 25320.

(e) "Remedy" or "remove" means any action to assess, evaluate, investigate, monitor, remove, correct, cleanup, or abate a release of a hazardous substance or to develop plans for those actions. "Remedy" includes any action set forth in Section 25322 and "remove" includes any action set forth in Section 25323.

(f) "Responsible party" means, notwithstanding any other provision of law, any person described in subdivision (a) of Section 25323.5 or subdivision (a) of Section 13304 of the Water Code.

33459.1. (a) An agency may take any actions which the agency determines are necessary and which are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, subject

to the conditions specified in subdivision (b). The agency shall request cleanup guidelines from the department and shall provide the department and local health and building departments with notification of any cleanup activity pursuant to this section at least 30 days before the commencement of the activity. If an action taken by an agency to remedy or remove a release of a hazardous substance is not satisfactory to the department or the California regional water quality control board, the department or the California regional water quality control board may require the agency to take, or cause the taking of, additional action to remedy or remove the release, as provided by applicable law. If methane or landfill gas is present, the agency shall obtain written approval from the California Integrated Waste Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) The party determined to be responsible for the release by the agency has been notified by the agency or has received adequate notice from the department, a regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to propose a remedial action plan and the responsible party has not agreed within an additional 60 days to implement a plan to remedy or remove the release that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.

(3) The party determined to be responsible for the release has entered into the agreement specified in paragraph (2), but the legislative body of the agency subsequently determines that the plan is not being carried out in an appropriate and timely manner by the responsible party.

(c) Subdivision (b) does not apply to the following agencies:

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) This section shall become inoperative January 1, 1994.

33459.2. (a) Within a project area, an agency may take any actions which the agency determines are necessary and which are consistent with other state and federal laws to remedy or remove hazardous waste from property if the agency obtains written approval from the department or a California regional water quality control board, as appropriate, prior to taking that action. In addition, if methane or landfill gas is present, the agency shall also obtain

written approval from the California Integrated Waste Management Board prior to taking that action.

(b) The terms "remove," "remedy," and "hazardous waste," as used in this section, have the same meaning given those terms by Sections 25323, 25322, and 25117, respectively.

(c) This section shall become operative January 1, 1994.

33459.3. (a) Notwithstanding any other provision of law, except as provided in Section 33459.7, an agency that undertakes and completes an action, as specified in subdivision (c), to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project, in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board, as appropriate, pursuant to subdivision (b), is not liable, with respect to that release only, under Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), of Division 20, or any other state or local law providing liability for remedial or removal actions for releases of hazardous substances.

(b) Upon approval of any cleanup or remedial action plan, pursuant to applicable statutes and regulations, the State Director of Health Services or the California regional water quality control board, as appropriate, shall acknowledge, in writing, that upon proper completion of the remedial or removal action in accordance with the plan, the immunity provided by this section shall apply to the agency.

(c) Notwithstanding any provision of law or policy providing for certification by a person conducting a remedial or removal action that the action has been properly completed, a determination that a remedial or removal action has been properly completed pursuant to this section shall be made only upon the affirmative approval of the State Director of Health Services or the California regional water quality control board, as appropriate.

(d) Upon proper completion of a remedial or removal action, as specified in subdivision (c), the immunity provided by this section extends to all of the following, but only for the release or releases specifically identified in the approved cleanup or remedial action plan and not for any subsequent release or any release not specifically identified in the approved cleanup or remedial action plan:

(1) Any employee or agent of the agency, including an instrumentality of the agency authorized to exercise some, or all, of the powers of an agency within, or for the benefit of, a redevelopment project and any employee or agent of the instrumentality.

(2) Any person who enters into an agreement with an agency for the redevelopment of property, if the agreement requires the person

to acquire property affected by a hazardous substance release or to remove or remedy a hazardous substance release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with an agency for redevelopment of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(e) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(1) Any person who was a responsible party for the release before entering an agreement, acquiring property, or providing financing, as specified in subdivision (d).

(2) Any person specified in subdivision (a) or (d) for any subsequent release of a hazardous substance or any release of a hazardous substance not specifically identified in the approved cleanup or remedial action plan.

(3) Any contractor who prepares the cleanup or remedial action plan, or conducts the removal or remedial action.

(4) Any person who obtains an approval, as specified in subdivision (b), or a determination, as specified in subdivision (c), by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained or before the person enters into an agreement, acquires the property or provides financing, as specified in subdivision (d), that the approval or determination was obtained by these means.

(f) The immunity provided by this section is in addition to any other immunity of an agency provided by law.

(g) This section does not impair any cause of action by an agency or any other party against the person, firm, or entity responsible for the hazardous substance release which is the subject of the removal or remedial action taken by the agency or other person immune from liability pursuant to this section.

(h) This section does not apply to, or limit, alter, or restrict any action for personal injury, property damage, or wrongful death.

(i) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (d) for damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(j) The agency shall reimburse the state department and the State Water Resources Control Board for their costs to review or approve cleanup or remedial action plans pursuant to this section.

33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action. An agency may not recover the costs of goods and services that were not

procured in accordance with applicable procurement procedures. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorney's fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on an agency's investment of surplus funds for the fiscal year in which costs were incurred.

(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section 25323.5.

(c) The scope and standard of liability for any costs recoverable pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.); provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (b) of Section 33459.

(d) An action for recovery of costs of a remedy or removal undertaken by a redevelopment agency under this section shall be commenced within three years after completion of the remedy or removal.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a redevelopment agency.

33459.5. Except as provided in Section 33459.3, nothing in this article shall limit the powers of the State Water Resources Control Board or a California regional water quality control board to enforce Division 7 (commencing with Section 13000) of the Water Code.

33459.6. The department and the State Water Resources Control Board shall prepare and submit a report to the Legislature by June 30, 1993, on the actions of agencies to remedy or remove releases of hazardous substances undertaken pursuant to this article.

33459.7. Sections 33459.3 and 33459.4 apply only to remedial or removal actions commenced by an agency before January 1, 1994. For purposes of this section, an agency that adopts a resolution to undertake a removal or remedial action shall be deemed to have commenced the removal or remedial action on the date the resolution is adopted.

33459.8. If an agency undertakes any action to remedy or remove a release of hazardous substances on, under, or from property within a project area, the agency shall amend its redevelopment plan and follow the same procedure, as specified, and the legislative body is subject to the same restrictions as provided for in Article 4 (commencing with Section 33330), for the adoption of a redevelopment plan, if the agency determines that as a result of the remedial or removal action, it will also be taking any of the following actions:

(a) Proposing to add new territory to the project area.

(b) Increasing either the limitation on the amount of funds to be allocated to the agency or the time limit on the establishing of loans,

advances, and indebtedness established pursuant to subdivisions (1) and (2) of Section 33333.2.

(c) Lengthening the period during which the redevelopment plan is effective.

(d) Merging project areas.

(e) Adding significant additional capital improvement projects.

CHAPTER 1114

An act to amend Section 885.060 of the Civil Code, relating to real property.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 885.060 of the Civil Code is amended to read:

885.060. (a) Expiration of a power of termination pursuant to this chapter makes the power unenforceable and is equivalent for all purposes to a termination of the power of record and a quitclaim of the power to the owner of the fee simple estate, and execution and recording of a termination and quitclaim is not necessary to terminate or evidence the termination of the power.

(b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

(c) However, subdivision (b) does not apply to a restriction for which a power of termination has expired under this chapter if the restriction is also an equitable servitude alternatively enforceable by injunction. Such an equitable servitude shall remain enforceable by injunction and any other available remedies, but shall not be enforceable by a power of termination. This subdivision does not constitute a change in, but is declaratory of, the existing law. However, nothing in this subdivision shall be construed to make enforceable any restriction prohibited or made unenforceable by other provisions of law, including Section 53.

CHAPTER 1115

An act to amend Section 143 of the Streets and Highways Code, relating to transportation facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 143 of the Streets and Highways Code is amended to read:

143. (a) The department may solicit proposals and enter into agreements with private entities, or consortia thereof, for the construction by, and lease to, private entities of four public transportation demonstration projects, at least one of which shall be in northern California and one in southern California.

(b) For the purpose of facilitating those projects, the agreements may include provisions for the lease of rights-of-way in, and airspace over or under, state highways, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct transportation facilities supplemental to existing state-owned transportation facilities. Facilities constructed by a private entity pursuant to this section shall, at all times, be owned by the state. The agreement shall provide for the lease of those facilities to the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the state at the expiration of the lease at no charge to the state.

(c) The department may exercise any power possessed by it with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to this section. Agreements for maintenance and police services entered into pursuant to this section shall provide for full reimbursement for services rendered by the department or other state agencies. The department may provide services for which it is reimbursed with respect to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(d) Agreements entered into pursuant to this section shall authorize the private entity to impose tolls for use of a facility constructed by it, and shall require that over the term of the lease the toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the facility, reimbursement to the state for the costs of maintenance and police services, and a reasonable return on investment to the private entity. The agreement shall require that any excess toll revenue either be applied to any

indebtedness incurred by the private entity with respect to the project or be paid into the State Highway Account, or both. Subsequent to expiration of the lease of a facility to a private entity, the department may continue to charge tolls for use of the facility.

(e) The plans and specifications for each project constructed pursuant to this section shall comply with the department's standards for state transportation projects. A facility constructed by and leased to a private entity shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

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

In order for the benefits, which will result from the implementation of this act, to accrue to the state's transportation program as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 1116

An act to add Section 53086 to the Government Code, and to add Section 5411.5 to the Public Utilities Code, relating to carriers.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 53086 is added to the Government Code, to read:

53086. Whenever a peace officer arrests any person for operating as a taxicab without a valid taxicab certificate, license, or permit required by any ordinance, and the offense occurred at a public airport, within 100 feet of a public airport, or within two miles of the California/Mexico international border, the peace officer may impound and retain possession of any vehicle used in a violation of the ordinance.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the

vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court for the immediate return of a vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle.

No peace officer, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 2. Section 5411.5 is added to the Public Utilities Code, to read:

5411.5. Whenever a peace officer arrests a person for a violation of Section 5411 involving the operation of a charter-party carrier of passengers without a valid certificate or permit at a public airport, within 100 feet of a public airport, or within two miles of the California/Mexico international border, the peace officer may impound and retain possession of the vehicle used in violation of Section 5411.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411 without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle.

No peace officer, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

CHAPTER 1117

An act to amend Section 16500.5 of, and to add Section 16500.55 to, the Welfare and Institutions Code, relating to child welfare, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1990. Filed with Secretary of State September 20, 1990.]

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

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

(a) Intensive in-home family preservation programs can reduce the cost of foster care by keeping families together.

(b) Local child welfare social workers are constrained in their efforts to keep families together and avoid foster care placement for abused children because there are insufficient in-home services available at the county level for these children and their families.

(c) According to estimates by the State Department of Social Services, 63,800 children will reside in foster care in the 1990–91 fiscal year due to abuse and neglect. This figure is 76 percent higher than the number of children placed in foster care in the 1985–86 fiscal year.

(d) It is the policy of the State of California that abused and neglected children should be served in their own homes whenever possible in order to prevent foster care placement and preserve family unity, and that reasonable efforts be made to prevent the need for out-of-home placement.

(e) Preliminary results of implementation of the family preservation services programs pursuant to Section 16500.5 of the Welfare and Institutions Code have shown that the programs are successful in reducing both the number of children placed and the cost to the state, paid from the General Fund, for services to these children and their families.

(f) It is imperative that the State of California recognize that its efforts to keep families safely together and prevent foster care placement will continue to be severely hampered unless the availability of family centered services is increased at the local level so that alternatives to foster care placement are readily available.

SEC. 2. 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 families to avoid or limit out-of-home placement of children through a family preservation program serving children who are at imminent risk of placement and would be eligible for AFDC-FC if they were placed out of their own homes.

(B) Providing supportive services for those children within the meaning of Sections 361 and 364 when they are returned to the family unit or when a minor will probably soon be within the jurisdiction of the juvenile court pursuant to Section 330.

(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 establish 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) (i) No more than three participating counties selected by the State Department of Social Services, one of which shall be Solano County, on a two-year 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 conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 330, 361, and 364.

(ii) The department or a participating county may terminate a county's participation in the program upon 30 days' notice if the project is deemed unsuccessful by either party.

(iii) For each fiscal year of the two-year program, a participating county may claim in advance an amount up 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.

(iv) 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 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 program year the sum of a participating county's total AFDC-FC General Fund expenditures for their children, added to the amount expended from the advance 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 expended from the advance 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 expended from the advance 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 program.

(4) Services which may be provided under this program may include, but are not limited to, counseling, parenting, respite, day treatment, transportation, 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. Each county may contract with individuals and organizations for services to be provided pursuant to this section.

(5) (A) Participating counties authorized by this subdivision shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of the following:

(i) Children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364.

(ii) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361.

(iii) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 330.

(B) The county welfare department social worker may return a dependent minor removed from the home pursuant to Section 361, with appropriate program services, pursuant to an appropriate court order.

(6) 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 services or to be children who can be returned to their families with the provision of services.

(7) 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 services under this subdivision than that amount which would be expended for placement in out-of-home care.

(8) The program in each county shall be deemed successful if at least 75 percent of the children receiving services remain in their own home for six months after termination of services, and if 60 percent remain at home one year after services are terminated. With respect to children selected to receive services who have already been removed from their home and placed in out-of-home care, the county program 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 of children who do not receive program services.

(9) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506.1 and 16507.1.

(10) Each county participating in the program authorized by this section may, subject to the approval of the department, continue to utilize the advance fund-claiming mechanism specified in paragraph (1) after the completion of the two-year program, on a two-year basis, if it demonstrates the successful outcome of the county program, based on the criteria for success specified in paragraph (8).

(11) The department shall submit a report to the Legislature that includes data from each participating 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 three pilot projects with a final report to be submitted after pilot project completion. Programs authorized after the original pilot projects shall submit data to the department upon the department's request. Subsequent reports to the Legislature on the programs administered pursuant to this section shall be included with the child welfare system report to the Legislature.

(c) A county welfare department social worker or probation officer may, pursuant to an appropriate court order, return a dependent minor or ward of the court removed from the home pursuant to Section 361 to his or her home, with appropriate interagency family preservation program services.

(d) State foster care funds shall remain within the administrative authority of the county welfare department and shall be used only for placement services or placement prevention services or county welfare department administrative cost related to the interagency family preservation program.

(e) To the extent permitted by federal law, any federal funds provided for services to families and children may be utilized for the purposes of this section.

SEC. 3. Section 16500.55 is added to the Welfare and Institutions Code, to read:

16500.55. (a) Subject to the approval of the State Department of Social Services and the Department of Finance, the family

preservation program provided for under Section 16500.5 may be expanded to allow the participation of up to a total of 15 counties.

(b) All of these family preservation programs shall be implemented and administered in accordance with Section 16500.5.

(c) The department shall only approve participation of any county that was not participating in the program, pursuant to subdivision (b) of Section 16500.5, on the effective date of the act which enacted this section in 1990, if the county has a high probability of success and if the majority of the family preservation projects are deemed successful, based on criteria set forth in paragraph (8) of subdivision (b) of Section 16500.5.

(d) Not more than six additional counties per year may participate pursuant to this section.

(e) In those counties newly participating in the program pursuant to this section, services to children who have been adjudged wards of the court pursuant to Sections 601 and 602 shall only be provided to the extent approved by the department.

SEC. 4. The State Department of Social Services shall, by March 31, 1992, provide a report to the appropriate committees of the Legislature, on the results of the child welfare services study, which shall include, but not be limited to, all of the following:

(a) A description of the relationship between the characteristics of children who enter the child welfare system, including, but not limited to, age, gender, race, and economic status, and subsequent outcomes for these children.

(b) A description of the reasons children were referred to emergency response, including the extent of family involvement with drugs or alcohol, which families received placement prevention services and the duration of those services, which children subsequently entered foster care and the type of foster care, which children went home from foster care, and which children went to a permanent alternative home, including adoption, guardianship, and long-term foster care.

(c) A description of the children in foster family home care who move to group home care and the types of services which, if provided, would make placement in group care unnecessary.

SEC. 5. The Director of Finance may authorize the transfer of funds, cumulatively not to exceed two hundred seventy-nine thousand five hundred dollars ($279,500) from Schedule (a) of Item 5180-101-001 of the Budget Act of 1990 to Schedule (b) of Item 5180-001-001, after review of projected workload data submitted by the State Department of Social Services. Of that amount, the sum of one hundred sixty-nine thousand five hundred dollars ($169,500) shall be used to implement and monitor the family preservation projects authorized by this act and operated by the participating counties and the sum of one hundred ten thousand dollars ($110,000) shall be used to fund a child welfare services study to collect and analyze data which will allow the State Department of Social Services to describe the process for children entering and leaving the

child welfare services system. The transfer of funds pursuant to this section is contingent on the ability of the projects to demonstrate General Fund savings pursuant to this act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow for the immediate expansion of the family preservation program and thereby to reduce the cost to the state of providing these services at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1118

An act to amend Sections 5102, 5112, 5119, 5303, 5606, 5624, 5652, 5705, 5758, 5801, 5865, 6202, 6503, 6514, 6528, 6650, 6750, 7200, 7250, 7252, 7266, 7451, 7453, 7504, 7507, 7509, 7675, 8050, 8156, 8253, 10000, and 10010 of, to amend and renumber Sections 5300, 5301, and 5302 of, to add Sections 5100.2, 5100.6, 5100.7, 5100.8, 5100.9, 5301, 5302, 5304, 5305, 5306, 5307, 5310, 5311, 6157, 6502.5, 6525.5, 6529, 6530, 6653.5, 7250.5, 7505.5, and 8202 of, to add Article 5 (commencing with Section 5320) and Article 6 (commencing with Section 5330) to Chapter 1 of Division 2 of, to repeal and add Sections 5100.5, 7350, 8160, 8200, and 8201 of, and to repeal Section 5304 of, the Financial Code, relating to savings associations, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 5100.2 is added to the Financial Code, to read:

5100.2. For purposes of this division:

(a) Any reference to regulations of the federal Office of Thrift Supervision or the Federal Deposit Insurance Corporation shall also be deemed to include and refer to regulations adopted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, to the extent these regulations have been continued in effect and made enforceable by the Office of Thrift Supervision or Federal Deposit Insurance Corporation, respectively, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

(b) Any reference to charters issued by the Office of Thrift Supervision shall also be deemed to include and refer to charters issued by the Federal Home Loan Bank Board.

SEC. 2. Section 5100.5 of the Financial Code is repealed.

SEC. 3. Section 5100.5 is added to the Financial Code, to read:

5100.5. "Affiliated person" of a savings association means the following:

(a) A director, officer, or controlling person of the savings association.

(b) A spouse of a director, officer, controlling person of the savings association.

(c) A member of the immediate family of a director, officer, or controlling person of the savings association, who has the same home as that person or who is a director or officer of any subsidiary of the savings association or of any holding company affiliate of the savings association.

(d) Any corporation or organization other than the savings association or a corporation or organization through which the savings association operates, of which a director, officer or controlling person of the savings association meets any of the following criteria:

(1) Is chief executive officer, chief financial officer, or a person performing similar functions.

(2) Is a general partner.

(3) Is a limited partner who, directly or indirectly either alone or with his spouse and the members of his immediate family who are also affiliated persons of the savings association, owns an interest of 10 percent or more in the partnership (based on the value of his contribution) or who, directly or indirectly with other directors, officers, and controlling persons of the savings association and their spouses and their immediate family members who are also affiliated persons of the savings association owns an interest of 25 percent or more in the partnership.

(4) Directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the savings association, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of the savings association and their spouses and their immediate family members who are also affiliated persons of the savings association, 25 percent or more of any class of equity securities.

(e) Any trust or other estate in which a director, officer, or controlling person of the savings association or the spouse of the person has a substantial beneficial interest or as to which the person or his or her spouse serves as trustee or in a similar fiduciary capacity.

SEC. 4. Section 5100.6 is added to the Financial Code, to read:

5100.6. "Affiliate" of a savings association, unless otherwise defined, includes any corporation, business trust, unincorporated association or other similar organization which meets the criteria of subdivision (a), (b), or (c), as follows:

(a) The savings association directly or indirectly, owns or controls either a majority of the voting shares or more than 50 per centum of the number of shares voted for the election of its directors, trustees,

or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions.

(b) Control thereof is held, directly or indirectly through stock ownership or in any other manner, by the shareholders of a savings association who own or control either a majority of the shares of the savings association or more than 50 per centum of the number of shares voted for the election of directors of that savings association at the preceding election, or by trustees for the benefit of the shareholders of any savings association.

(c) A majority of its directors, trustees, or other persons exercising similar functions are directors of any one savings association.

SEC. 5. Section 5100.7 is added to the Financial Code, to read:

5100.7. "Controlling person" of a savings association means any person or entity which (a) either directly or indirectly or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing, 10 percent or more of the voting shares or rights of the association or (b) controls in any manner the election or appointment of a majority of the directors of the association. However, a director of a savings association shall not be deemed to be a controlling person of the association based upon his or her voting, or acting in concert with other directors in voting, proxies (a) obtained in connection with an annual solicitation of proxies or (b) obtained from savings account holders and borrowers if the proxies are voted as directed by a majority vote of the entire board of directors of that association, or of a committee of those directors if the committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

SEC. 6. Section 5100.8 is added to the Financial Code, to read:

5100.8. "Immediate family" of any natural person means any of the following (whether by the full or half blood or by adoption):

(a) The person's spouse, father, mother, children, brothers, sisters, and grandchildren.

(b) The father, mother, brothers, and sisters of the person's spouse.

(c) The spouse of a child, brother, or sister of the person.

SEC. 7. Section 5100.9 is added to the Financial Code, to read:

5100.9. "Institution-affiliated party" means any of the following:

(a) Any director, officer, employee or controlling stockholder of, or agent for, a savings association.

(b) Any person who has filed or is required to file an application to become a savings and loan holding company with the commissioner pursuant to Section 5801.

(c) Any shareholder, consultant, joint venture partner, and any other person as determined by the commissioner (by regulation or case-by-case) who participates in the conduct of the affairs of a savings association.

(d) Any independent contractor (including any attorney,

appraiser, or accountant) who knowingly or recklessly participates in any of the following which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the savings association:

(1) Any violation of law or regulation.

(2) Any breach of fiduciary duty.

(3) Any unsafe or unsound practice.

SEC. 8. Section 5102 of the Financial Code is amended to read:

5102. (a) "Association" or "savings association" means a mutual or stock savings association, savings and loan association or savings bank subject to the provisions of this division, but excluding a federal association.

(b) "Federal association" means a savings and loan association or federal savings bank that is chartered by the Office of Thrift Supervision under Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. Sec. 1464), as amended.

SEC. 8.5. Section 5112 of the Financial Code is amended to read:

5112. "Net worth certificate" means a certificate issued by an association in accordance with Section 13i of the Federal Deposit Insurance Act, as amended (12 U.S.C., Sec. 1823i) and regulations promulgated thereunder by the Federal Deposit Insurance Corporation.

SEC. 8.6. Section 5119 of the Financial Code is amended to read:

5119. "Service corporation" means a corporation, other than a wholly owned subsidiary referred to in Section 7300 or a wholly owned subsidiary doing business as a finance subsidiary in accordance with the requirements of 12 C.F.R. 563.132, in which at least 80 percent of the shares of stock having voting power are owned by one or more associations or federal associations. As used in this section "voting power" shall have the same meaning as defined in Section 194.5 of the Corporations Code.

SEC. 9. Section 5300 of the Financial Code is amended and renumbered to read:

5307. Whoever willfully and knowingly makes, issues, circulates, transmits, or causes or knowingly permits to be made, issued, circulated, or transmitted, any statement or rumor which is written, printed, reproduced in any manner, or communicated by word of mouth, that is untrue in fact and is directly or by inference false, or malicious in that it is calculated to injure the reputation or business, financial condition, or standing of any association shall be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.

SEC. 10. Section 5301 of the Financial Code is amended and renumbered to read:

5308. Whoever knowingly makes or causes to be made, directly or indirectly, or through any agency whatsoever, any false statement or report, or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of any association

upon any application, advance, discount, purchase or repurchase agreement, commitment, or loan or the change or extension of any of these transactions by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security for these transactions shall be punished by a fine of not more than ten thousand dollars ($10,000) or, by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.

SEC. 11. Section 5301 is added to the Financial Code, to read:

5301. (a) The commissioner may refer such evidence as is available concerning any violation of this division or of any regulation, order issued by the commissioner, or of any condition imposed in writing by the commissioner in connection with any grant of any application or request by the savings association or of a written agreement between the savings association and the commissioner to the Attorney General or to the district attorney of the county in which the violation occurred, who may, with or without such a referral, institute appropriate civil or criminal proceedings under this division.

(b) The commissioner and his or her counsel, deputies, or assistants may, upon request of the Attorney General or district attorney, assist the Attorney General or district attorney in presenting law or facts at any trial in these proceedings.

SEC. 12. Section 5302 of the Financial Code is amended and renumbered to read:

5300. Every person who willfully violates or willfully fails to comply with any of the provisions of this division is guilty of a public offense. Except where the offense is declared to be a felony or a misdemeanor or a different punishment is prescribed, a person convicted under this section shall be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.

SEC. 13. Section 5302 is added to the Financial Code, to read:

5302. (a) Whoever knowingly violates subdivision (a) or (b) of Section 6525.5 shall be punished by a fine of not more than one million dollars ($1,000,000) for each day the violation continues, by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment.

(b) Any person who is subject to an order issued pursuant to Section 8201 who knowingly violates the order, directly or indirectly, shall be punished by a fine of not more than one million dollars ($1,000,000) for each day violation continues, by imprisonment in state prison for 2, 3, or 4 years, or by both that fine and imprisonment.

SEC. 14. Section 5303 of the Financial Code is amended to read:

5303. Any officer, director, employee, or agent of any association (a) who willfully makes or knowingly concurs in the making or publishing of a false or untrue material entry in any book, record, report, statement concerning the business or affairs of the

association, or statement of condition or in connection with any transaction of the association, with intent to deceive any officer or director thereof, or with intent to deceive any agency or examiner, whether private or public, employed or lawfully appointed to examine into the assocation's condition or to examine into any of the association's affairs or transactions, or with intent to deceive any public officer, office, or board to which the association is required by law to report or which has authority by law to examine into the association's affairs or transactions or (b) who, with like intent, willfully omits to make a material new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the association in any appropriate book, record, report, or statement of the association, which entry is required to be made by law or generally accepted accounting principles applicable to a savings institution, or (c) who, with like intent, willfully alters, abstracts, conceals, refuses to allow to be inspected by the commissioner or the commissioner's deputies or examiners, or destroys any books, records, reports, or statements of the association made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment.

SEC. 15. Section 5304 of the Financial Code is repealed.

SEC. 16. Section 5304 is added to the Financial Code, to read:

5304. (a) It is unlawful for any person to corruptly give, offer, or promise anything of value to any other person, with intent to influence or reward any institution-affiliated party in connection with any business or transaction of a savings association.

(b) It is unlawful for any institution-affiliated party to corruptly solicit or demand for the benefit of any person, or corruptly accept or agree to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of the savings association.

(c) Any person who violates subdivision (a) or (b) shall be punished by a fine of not more than one million dollars ($1,000,000) or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed one thousand dollars ($1,000), the offense shall instead be 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 in the state prison, or by both that fine and imprisonment.

(d) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business or where the amount of money or monetary

worth of the thing of value is one hundred dollars ($100) or less.

SEC. 17. Section 5305 is added to the Financial Code, to read:

5305. Any institution-affiliated party who abstracts or willfully misapplies any of the money, funds, or property of the savings association, or willfully misapplies its credit, is guilty of a felony and shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the amount abstracted or willfully misapplied does not exceed one hundred dollars ($100), the offense shall instead be 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 in the state prison, or by both that fine and imprisonment.

SEC. 18. Section 5306 is added to the Financial Code, to read:

5306. Any institution-affiliated party who knowingly executes, or attempts to execute, a scheme or artifice to defraud a savings association or to obtain any of the moneys, funds, credits, assets, securities or other property owned by or under the custody or control of a savings association by means of false or fraudulent pretenses, representations, or promises, shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in state prison for 2, 3, or 4 years, or by both that fine and imprisonment.

SEC. 18.5. Section 5307 is added to the Financial Code, to read:

5307. (a) A person shall be sentenced to consecutive terms for each violation of Section 5303, 5304, 5305, or 5306 up to a mandatory term of 20 years in state prison if all of the following are charged in the accusatory pleading and admitted by the defendant, or found to be true by the trier of fact:

(1) The person is an institution affiliated party.

(2) The person engaged in a pattern and practice of activity involving multiple violations of Section 5303, 5304, 5305, or 5306.

(3) The person acted with intent to cause substantial harm, or with reckless disregard of the possibility of causing substantial harm, to the savings institution.

(4)The violations did in fact result in substantial harm to the savings institution.

(b) No part of a consecutive sentence required pursuant to subdivision (a) may be suspended or revoked by the court.

(c) Nothing in subdivision (a) shall limit the court's discretion to sentence the defendant to a consecutive term longer than provided for in that subdivision, if otherwise permitted by law.

(d) Nothing in subdivision (a) shall limit the court's discretion to order consecutive sentences for violations of Section 5303, 5304, 5305, or 5306 under any other provision of law.

SEC. 19. Section 5310 is added to the Financial Code, to read:

5310. (a) Any person violating or conspiring to violate Sections 5303, 5304, 5305, or 5306 shall be subject to a civil penalty in an amount assessed by the court in a civil action under this section.

(b) The maximum amount of the penalty which may be imposed under this section shall be determined in accordance with the following:

(1) Except as provided by paragraphs (2) and (3), the civil penalty shall not exceed one million dollars ($1,000,000).

(2) In the case of a continuing violation, the amount of the civil penalty may exceed the amount described in paragraph (1), but may not exceed the lesser of one million dollars ($1,000,000) for each day the violation continues or five million dollars ($5,000,000).

(3) If any person derives pecuniary gain from the violation, or if the violation results in pecuniary loss to a person other than the violator, the amount of the civil penalty may exceed the amounts described in paragraphs (1) and (2) but may not exceed the amount of that gain or loss.

(c) A civil action to recover a civil penalty under this section shall be brought in the name of the people of the State of California by the Attorney General, who shall be required to establish the right to recovery by a preponderance of the evidence.

(d) For the purpose of conducting a civil investigation in contemplation of proceeding under this section, the Attorney General may do all of the following:

(1) Administer oaths and affirmations.

(2) Take evidence.

(3) By subpoena or subpoena duces tecum, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry.

SEC. 19.5. Section 5311 is added to the Financial Code, to read:

5311. (a) Any fine or civil penalty imposed under this chapter shall be based upon the ability of the defendant to pay. In setting the amount of the fine or civil penalty, consideration shall also be given to the seriousness of the offense, the amount of any pecuniary gain by the defendant, and the amount of any pecuniary loss, other than defendant's own loss, caused by the offense.

(b) A civil penalty may not be imposed against a person under this chapter if that person has been punished by a fine or imprisonment for the same violation.

(c) A fine may not be imposed under this chapter if a civil penalty has previously been imposed for the same violation.

SEC. 20. Article 5 (commencing with Section 5320) is added to Chapter 1 of Division 2 of the Financial Code, to read:

Article 5. Criminal Forfeiture

5320. If a person is convicted of a violation of Section 5303, 5304, 5305, or 5306, any property, real or personal, which constitutes or is derived from proceeds traceable to that violation is subject to forfeiture pursuant to this article.

5321. (a) The prosecuting agency shall, in conjunction with the

criminal proceeding, file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense. The petition shall allege that the defendant has engaged in acts chargeable as crimes pursuant to Section 5303, 5304, 5305, or 5306 and shall identify the property subject to forfeiture. A notice regarding the petition shall be provided, by personal service or registered mail, to every person who may have an interest in the property specified in the petition. However, if the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. The notice shall state that any interested person may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. The notice shall set forth the time within which a claim of interest in the property seized is required to be filed.

(b) If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition of forfeiture, record a lis pendens in each county in which the real property is situated which specifically identifies the property by legal description and assessor's parcel number. The judgment of forfeiture shall not affect the interest in real property of any third party which was acquired prior to the recording of the lis pendens.

5322. (a) Any person claiming an interest in the property may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.

(b) (1) If, at the end of the time set forth in subdivision (a), an interested person, other than the defendant, has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of the provisions of subdivision (d).

(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to the provisions of this article. If the defendant fails to admit or deny or to file a claim of interest in the property or proceeds, the court shall enter a response of denial on behalf of the defendant.

(c) (1) The forfeiture proceeding shall be set for hearing in the superior court in which the underlying criminal offense will be tried.

(2) If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(d) At the forfeiture hearing, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the

defendant was engaged in actions in violation of Sections 5303, 5304, 5305, and 5306 and that the property specified in the petition otherwise meets the criteria for forfeiture under Section 5320. If a jury is the trier of fact, the verdict shall be unanimous in order to impose the forfeiture.

5323. (a) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo of the property alleged in the petition of forfeiture:

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that such property may be maintained and preserved.

(b) No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that such an order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds or property interests forfeitable under Section 5320. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

(d) The court shall, in making its orders, seek to protect the interests of those who may be involved in the same enterprise as the defendant, but who were not involved in the commission of the violation of Section 5303, 5304, 5305, or 5306.

5324. (a) If the trier of fact at the forfeiture hearing finds that the alleged property or proceeds is forfeitable pursuant to Section 5320, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in Section 5325. No property solely owned by a bona fide purchaser for value shall be subject to forfeiture.

(b) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to Section 5320, but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity which initiated the forfeiture proceeding, the amount of the difference between the appraised value of the property and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local governmental entity

shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and any indicia of ownership of the property shall be forwarded. The appraised value shall be determined as of the date judgment is entered either (a) by agreement between the holder of the lien, mortgage, security interest, or interest under a conditional sales contract and the governmental entity involved or (b) if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(c) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the county if the district attorney is the prosecutor, by the city if the city attorney is the prosecutor, or by the Department of General Services if the Attorney General is the prosecutor. Notice of the sale shall be provided by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

5325. Notwithstanding that no response or claim has been filed pursuant to Section 5322, in all cases where property is forfeited pursuant to this article and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all such lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this article.

(c) To the general fund of the state or local governmental entity, whichever prosecutes.

SEC. 21. Article 6 (commencing with Section 5330) is added to Chapter 1 of Division 2 of the Financial Code, to read:

Article 6. Civil Penalties

5330. The commissioner may impose civil penalties on any savings association, and any institution-affiliated party as follows:

(a) Except as provided in subdivision (b) or in subdivisions (c) and (d), any savings association which, and any institution-affiliated party who, commits any of the following violations shall forfeit and pay a civil penalty of not more than five thousand dollars ($5,000) for each day during which the violation continues:

(1) Violation of any statute or regulation.

(2) Violation of any order issued by the commissioner.

(3) Violation of any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the savings association.

(4) Violation of any written agreement between the savings association and the commissioner.

(b) Any savings association which, and any institution-affiliated party who, (1) commits any violation specified in subdivision (a), (2) recklessly engages in an unsafe or unsound practice in conducting the affairs of the savings association, or (3) breaches any fiduciary duty shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day during which the violation, practice, or breach continues if the violation, practice, or breach (1) is part of a pattern of misconduct, (2) causes or is likely to cause more than a minimal loss to the savings association, or (3), was committed by an institution-affiliated party and results in pecuniary gain or other benefit to that institution-affiliated party.

(c) Notwithstanding subdivisions (a) and (b), any savings association which, and any institution-affiliated party who, (1) knowingly commits any violation specified in subdivision (a), engages in any unsafe or unsound practice in conducting the affairs of the savings association, or breaches any fiduciary duty, and (2) knowingly or recklessly causes a substantial loss to the savings association or, in the case of an institution-related party, a substantial pecuniary gain or other benefit to the institution-related party results by reason of violation, practice or breach, shall forfeit and pay a civil penalty in an amount not to exceed the maximum amount determined under this subdivision for each day during which the violation, practice, or breach continues. The maximum daily amount of any civil penalty which may be assessed pursuant to this subdivision for any violation, practice, or breach described in the subdivision is as follows:

(1) In the case of any person other than a savings association, an amount not to exceed one million dollars ($1,000,000).

(2) In the case of any savings institution, an amount not to exceed the lesser of one million dollars ($1,000,000) or 1 percent of the total assets of the association.

(d) (1) Any penalty imposed under subdivisions (a), (b), or (c) may be assessed and collected by the commissioner by written

notice.

(2) If, with respect to any assessment under paragraph (1) a hearing is not requested pursuant to subdivision (g) within the period of time allowed under subdivision (g), the assessment shall constitute a final and unappealable order.

(e) The commissioner may compromise, modify or remit any penalty which may be assessed or which has been assessed pursuant to subdivision (a), (b), or (c).

(f) In determining the amount of any penalty imposed under subdivision (a), (b), or (c), the commissioner shall take into account the appropriateness of the penalty with respect to all of the following:

(1) The size of financial resources and good faith of the savings association or other person charged.

(2) The gravity of the violation, practice, or breach.

(3) The history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty.

(4) Such other matters as justice may require.

(g) The savings association or other person against whom any penalty is assessed under this section shall be afforded a departmental hearing if the association or person submits a request for a hearing within 20 days after the issuance of the notice of assessment.

(h) (1) If any savings association or institution-related party fails to pay an assessment after any civil monetary penalty assessed under this section has become final, the department shall recover the amount assessed by action in superior court.

(2) Notwithstanding any other provision of law, review under Section 8055 of the validity or appropriateness of any civil penalty assessed under this section shall be conducted solely pursuant to Section 1085 of the Code of Civil Procedure.

(i) All penalties collected under authority of this section shall be deposited in the Savings Association Special Regulatory Fund.

SEC. 22. Section 5606 of the Financial Code is amended to read:

5606. (a) Prior to doing business in this state, an association shall obtain and maintain insurance of its savings accounts by the Federal Deposit Insurance Corporation.

(b) Prior to doing business in this state, a foreign savings association, as defined in Sections 10000 and 10010, shall maintain insurance of its savings accounts by the Federal Deposit Insurance Corporation.

(c) The commissioner may enforce any statutes pertaining to, or any regulations of, the Federal Deposit Insurance Corporation or the Office of Thrift Supervision insofar as those statutes and regulations apply to associations, and may enforce any and all other federal statutes and regulations applicable to associations.

SEC. 23. Section 5624 of the Financial Code is amended to read:

5624. An association may issue net worth certificates in accordance with applicable regulations of the Office of Thrift

Supervision or the Federal Deposit Insurance Corporation.

SEC. 24. Section 5652 of the Financial Code is amended to read:

5652. Except as otherwise authorized under existing law, no person, unless lawfully authorized to do business in this state under the provisions of this division and who is actually engaged in carrying on a savings association business, shall:

(a) Do business under any name or title that contains the following terms:

(1) "Savings association."

(2) "Savings bank."

(3) "Savings and loan association."

(4) "Building and loan association."

(5) "Building association."

(6) Any combination employing either or both of the words "building," or "loan," with one or more of the words "saving," "savings," or words of similar import.

(7) Any combination employing one or more of the words "saving," "savings," or words of similar import with one or more of the words "association," "bank," "institution," "society," "company," "fund," "corporation," or words of similar import.

Notwithstanding the provisions of this subdivision, use of the term "savings bank" in a name or title is not prohibited to any person regulated by the provisions of Division 1 (commencing with Section 99) or under procedures and regulations promulgated by the Comptroller of the Currency, Federal Reserve Board, Office of Thrift Supervision, Federal Housing Finance Board, or Federal Deposit Insurance Corporation. Any reference to the term "savings bank" in this division is not intended to apply to any person other than persons authorized to do business in this state under this division.

(b) Use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an association or is likely to lead any person to believe that the business is that of an association.

SEC. 25. Section 5705 of the Financial Code is amended to read:

5705. After the meeting of the stockholders and members, the association shall take any action necessary to make it a federal association, and promptly after receipt of the federal charter the association shall file in the office of the commissioner and in the office of the Secretary of State, a copy of the charter issued to it by the Office of Thrift Supervision or a certificate showing the organization of the association as a federal association certified by or on behalf of the Office of Thrift Supervision. Upon the filing of this instrument in the office of the Secretary of State the association ceases to be a state association and is a federal association.

SEC. 26. Section 5758 of the Financial Code is amended to read:

5758. The executed agreement, or an executed counterpart of it

and the respective certificate of each constituent association or any other corporation and of the surviving association shall be filed with the Secretary of State. Neither the agreement nor any certificate shall be filed, however, unless the commissioner's written approval is attached and until there has been filed with the Secretary of State, by or on behalf of each association or any other corporation taxed under the provisions of Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 of the Revenue and Taxation Code, the existence of which is terminated by the merger or consolidation, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the act have been paid or secured. The effective date of the merger or consolidation under this article shall be the date of the filing with the Secretary of State of the copy of the approved agreement of merger or consolidation. A copy of the approved agreement certified by the Secretary of State shall be filed with the commissioner.

If the resulting association is a federal association, the effective date of merger shall be the date the merger is effective under regulations of the Office of Thrift Supervision.

SEC. 27. Section 5801 of the Financial Code is amended to read:

5801. (a) Except as provided in subdivision (b), no person may become a savings and loan holding company, or thereafter register under Section 5804, unless the commissioner approves a completed application. The application shall be in a form prescribed by the commissioner, contain the following information and any additional information that the commissioner may determine by regulation or by written instructions to be necessary or appropriate to preserve the public interest, the integrity of the state's savings association system, and to protect the interests of savings account holders, borrowers, and stockholders resident in this state:

(1) The identity, experience, and financial and managerial resources of each acquiring person by whom or on whose behalf the application is made.

(2) The terms, conditions, and method of any proposed acquisition, including copies of all tender offers used or to be used in connection with any proposed acquisition of capital stock.

(3) The source, kind, and amount of the consideration used or to be used in making the acquisition, and, if any part of the consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of all participating persons.

(4) Any plans or proposals that any acquiring person may have to liquidate or convert the association or savings and loan holding company, to sell its assets or merge it with any company, to change the number of its employees in this state or the terms and conditions of their employment, or to make any other substantial change in its business, corporate structure, management or employees upon becoming a holding company.

(5) The names of those officers and directors that the acquiring

person proposes to install in any change of managements, and for each of those officers and directors a financial statement, a description of experience in savings association related matters, and a statement as to whether the officer or director ever has been found guilty of misrepresentation, fraud, or financial misdealings.

(6) If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal Securities Act of 1933, as amended, or in circumstances requiring the disclosure of similar information under the federal Securities Exchange Act of 1934, as amended, or in an application filed with the Office of Thrift Supervision or Federal Deposit Insurance Corporation requiring similar disclosure, that registration statement or application may be filed with the commissioner in lieu of the requirements of this section.

(b) The commissioner may exempt any transaction from the operation of this section if the commissioner determines that regulation of the transaction is not necessary or appropriate.

SEC. 28. Section 5865 of the Financial Code is amended to read:

5865. A mutual holding company shall be deemed to be a savings association continuing its organization under this division and may engage only in activities authorized for an association, but may not issue or accept savings accounts or other deposits and the provisions of subdivision (a) of Section 5606 requiring insurance of savings accounts by the Federal Deposit Insurance Corporation shall not be applicable. The articles of incorporation of the mutual holding company shall be amended to delete any inappropriate statements otherwise required by Section 5501.5 and shall include the following statement:

"This corporation is a mutual holding company organized under the California Savings Association Law (Article 10 (commencing with Section 5860) of Chapter 2 of Division 2 of the Financial Code)."

SEC. 29. Section 6157 is added to the Financial Code, to read:

6157. Every savings association subject to the new director or senior executive officer notice requirements of Section 32 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831i) based upon recent chartering or change of control or failure to maintain the minimum required capital or otherwise troubled condition shall provide the commissioner, at the same time the notice is submitted to the appropriate federal agency, with a copy of the notification submitted in compliance with that requirement.

SEC. 30. Section 6202 of the Financial Code is amended to read:

6202. No indemnity bond coverage is required of any agent that is a financial institution insured by the Federal Deposit Insurance Corporation.

SEC. 31. Section 6502.5 is added to the Financial Code, to read:

6502.5. An association may, acquire, hold, sell, develop, subdivide, dispose of, and convey real and personal property consistent with its objects and powers. It may mortgage, pledge, or lease any real or

personal property and may take the property by gift, devise, or bequest.

SEC. 32. Section 6503 of the Financial Code is amended to read:

6503. (a) No association or subsidiary thereof, without the prior written consent of the commissioner, shall enter into either of the following:

(1) Any transaction or modification of any transaction with an affiliated person to buy, lease, or sell real or personal property, or take that property by gift.

(2) Any consulting contracts or contracts for services with an affiliated person.

(b) As a condition to approving a transaction specified in subdivision (b), the commissioner shall make both of the following findings:

(1) The terms of the transaction are fair to, and in the best interests of, the savings association or subsidiary. In the case of real or personal property transactions, this finding shall be supported by an appraisal not prepared by an affiliated person or employee of the association or subsidiary.

(2) The transaction was approved in advance by a resolution duly adopted with full disclosure by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of the association or subsidiary (or alternatively by a majority of the total votes eligible to be cast by the voting members or stockholders of the association at a meeting called for that purpose, with no votes cast by proxies not solicited for that purpose). For purposes of this subdivision, "full disclosure" shall include, but not be limited to, (A) the affiliated person's source of financing for any real property involved in the transaction and (B) whether the association or any subsidiary thereof has a deposit relationship with any financial institution or holding company or affilite thereof providing the financing.

SEC. 32.5. Section 6514 of the Financial Code is amended to read:

6514. (a) An association may act, and receive compensation for so acting, as trustee of any trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan that qualifies for specific tax treatment under Section 401 of the Internal Revenue Code of 1986 (26 U.S.C., Sec. 401), as amended.

(b) It may also act, and receive compensation for so acting, as trustee or custodian of an individual retirement account within the meaning of Section 408 of the Internal Revenue Code of 1986, as amended.

(c) Assets of the trust or account must be invested only in savings accounts of the association, in obligations or securities issued by the association, or in other investments that are approved by the commissioner.

(d) All assets held in fiduciary capacity by any association under the authority of this section may be commingled and consolidated for appropriate purposes of investment if records reflecting each

separate beneficial interest are maintained by the fiduciary or by another appropriate party who assumes that duty.

(e) The trustee or custodian may accept noncash assets under this section if the assets are converted into cash as soon as practicable.

SEC. 33. Section 6525.5 is added to the Financial Code, to read:

6525.5. Except with the prior written consent of the commissioner:

(a) No person who has been convicted of any criminal offense involving dishonesty or breach of trust may participate, directly or indirectly, in any manner in the conduct of the affairs of a savings association.

(b) A savings association shall not permit any person who has been convicted of any criminal offense involving dishonesty or breach of trust to participate, directly or indirectly, in any manner in the conduct of the affairs of the savings association.

SEC. 34. Section 6528 of the Financial Code is amended to read:

6528. An association may provide correspondent services primarily to other depository institutions to the extent that the activity does not violate other provisions of law.

(a) An association may maintain a noninterest-bearing account at any institution at which accounts are insured by the Federal Deposit Insurance Corporation, if the account is necessary or incidental to a correspondent relationship.

(b) An association may receive non-interest-bearing deposits from correspondent institutions for use as compensating balances, for settlement purposes, or for other purposes incidental to a correspondent relationship. These deposits may be payable on demand and subject to withdrawal by negotiable or transferable instrument, order, or authorization. These deposits shall not give rise to voting rights of membership in a state mutual association.

SEC. 35. Section 6529 is added to the Financial Code, to read:

6529. (a) No affiliated person of a savings association may receive, either directly or indirectly, from the association, a subsidiary thereof, or any other source any fee or other compensation of any kind in connection with the procurement of a loan from that association or subsidiary.

(b) No savings association shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate closing service shall be referred to any person by the savings association or by a subsidiary or affiliated person thereof, in connection with any loan on real property made by a savings association or subsidiary thereof.

(c) Other than for services actually performed, no person shall give and no savings association or subsidiary or affiliated person thereof shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate closing service in connection with a transaction involving a loan on real property made by a savings association or subsidiary thereof.

(d) For purposes of subdivisions (b) and (c), "real estate closing service" includes any service provided in connection with the execution of a real estate escrow transaction, including, but not limited to, title searches, title examinations, the provision of title reports, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate licensee, and the handling of the processing.

SEC. 36. Section 6530 is added to the Financial Code, to read:

6530. (a) No savings association may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the commissioner, the Attorney General, or any district attorney regarding a possible violation of any law or regulation by the savings association or any of its officers, directors, or employees.

(b) Any employee or former employee who believes he or she has been discharged or discriminated against in violation of subdivision (a) may file a civil action in superior court before the close of the 2-year period beginning on the date of that discharge or discrimination. The plaintiff shall also file a copy of the complaint initiating the civil action with the commissioner.

(c) If the court determines that a violation of subdivision (a) has occurred, it may order the association which committed the violation to do any of the following:

(1) Reinstate the employee to his or her former position.

(2) Pay compensatory damages.

(3) Take other appropriate actions to remedy any past discrimination.

(d) The protections of this section shall not apply to any employee who does either of the following:

(1) Deliberately causes or participates in the alleged violation of law or regulation.

(2) Knowingly or recklessly provides substantially false information to the commissioner, the Attorney General, or any district attorney.

SEC. 36.5. Section 6650 of the Financial Code is amended to read:

6650. As used in Sections 6655, 6656, 6657, 6659, and 6660:

(a) "Account" means withdrawable or repurchasable shares, investment certificates, deposits or savings accounts as defined in Section 561.2, 561.16, 561.28, 561.29, 561.42, or 563.6 of Title 12 of the Code of Federal Regulations pursuant to which the account holder from time to time may make deposits and effect withdrawals.

(b) "Account holder" means a person who is identified on the signature card for an account, or in the absence of a signature card, a person who has an interest in an account which is reflected on the records of the association for that account to whom statements of account or other notices are normally given, or the agent of such

person.

(c) "Charges" means those charges which an association may, from time to time, impose on an account in the normal course of business in the operation of the account and, does not include:

(1) Charges which may be imposed for extraordinary services furnished at the specific request of the account holder.

(2) Charges or amounts required to be disclosed to the depositor pursuant to the Truth-in-Lending Act (15 U.S.C. Sec. 1601 et seq.) and Regulation Z (12 C.F.R. 226.1 et seq.), as amended.

SEC. 37. Section 6653.5 is added to the Financial Code, to read:

6653.5. (a) A troubled savings association may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more accounts.

(b) Any renewal of a savings account in any troubled savings association and any rollover of any amount on deposit in such a savings account shall be treated as an acceptance of funds by the troubled savings association for purposes of subdivision (a).

(c) The commissioner may, on a case-by-case basis and upon application by a savings association, waive the applicability of subdivision (a) upon a finding that the acceptance of these deposits does not constitute an unsafe or unsound practice with respect to that savings association.

(d) The commissioner may impose, by regulation or order, such additional restrictions on the acceptance of broker deposits by any troubled savings association as the commissioner may determine to be appropriate.

(e) For purposes of this section:

(1) "Deposit broker," except as otherwise provided in paragraph (2), means either of the following:

(A) Any person engaged in (i) the business of placing deposits, or facilitating the placement of deposits, of third parties with financial institutions or (ii) the business of placing deposits with financial institutions for the purpose of selling interests in those deposits to third parties.

(B) An agent or trustee who establishes a savings account to facilitate a business arrangement with a financial institution to use the proceeds of the account to fund a prearranged loan.

(2) Subject to paragraph (3), "deposit broker" does not include any of the following:

(A) A savings association with respect to funds placed with that savings association.

(B) An employee of a savings association with respect to funds placed with the employing savings association.

(C) A trust department of a savings association, if the trust in question has not been established for the primary purpose of placing funds with financial institutions.

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan.

(E) A person acting as a plan administrator or an investment

adviser in connection with a pension plan or other employee benefit plan, provided that that person is performing managerial functions with respect to the plan.

(F) The trustee of a testamentary account.

(G) The trustee of an irrevocable trust (other than one described in subparagraph (B) of paragraph (1), as long as the trust in question has not been established for the primary purpose of placing funds with financial institutions.

(H) A trustee or custodian of a pension or profitsharing plan qualified under Section 401(d) or 403(a) of the federal Internal Revenue Code of 1986.

(I) An agent or nominee whose primary purpose is not the placement of funds with financial institutions.

(3) The exceptions specified in paragraph (2) do not apply to, and the term "deposit broker" includes, any savings association, and any employee of any savings association, that engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to those deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other associations and federal associations in the savings association's normal market area.

(4) "Employee" means any person meeting all of the following criteria:

(A) The person is employed exclusively by the savings association.

(B) The person's compensation is primarily in the form of a salary.

(C) The person does not share that compensation with a deposit broker.

(D) The person's office space or place of business is used exclusively for the benefit of the savings association which employs the person.

(5) "Troubled savings association" means any savings association which does not meet the minimum capital requirements applicable with respect to that savings association.

SEC. 37.5. Section 6750 of the Financial Code is amended to read:

6750. Except as otherwise expressly provided in this article, an association or federal association may issue savings accounts to any married person or minor as the sole and absolute owner of the account, and receive payments by or for the owner, and pay withdrawals, accept pledges to the association, and act in any other manner with respect to the accounts on the order of a married person or minor. A married person or minor may establish a trust under Sections 401 and 408 of the Internal Revenue Code of 1986, as amended, and an association or federal association may issue savings accounts to the trust.

SEC. 37.8. Section 7200 of the Financial Code is amended to read:

7200. No association shall invest in any security under this chapter, other than in liquid assets, or in any loan at any time if the association fails to meet the minimum liquidity requirements prescribed by Section 566.2 of Title 12 of the Code of Federal

Regulations, unless the commissioner has issued prior written approval. "Liquid assets," as used in this section, has the same meaning as defined by the regulations codified in Section 566.1 of Title 12 of the Code of Federal Regulations.

SEC. 38. Section 7250 of the Financial Code is amended to read:

7250. Notwithstanding any other provision of law, an association may invest in the following securities without limit, and in addition may invest not in excess of 5 percent of its assets in other securities that are deemed prudent by the association:

(a) Bonds or other interest bearing notes and obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest, or obligations that are fully guaranteed as to principal and interest by, the United States, any state, or any state's political subdivisions, including its agencies, corporations and instrumentalities.

(b) Stock, bonds or obligations of any federal home loan bank.

(c) Stock or obligations of any international home loan bank or similar agency incorporated by authority of an act of Congress.

(d) Stock, obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any other agency of the United States and an association may issue and sell securities that are guaranteed under paragraph (g) of Section 306 of the National Housing Act (12 U.S.C. Sec. 1701 et seq.).

(e) Bonds, other evidences of indebtedness or obligations of, or guaranteed as to principal and interest by, the Dominion of Canada or any of its provinces, provided that the principal and interest of the obligations are payable in United States funds.

(f) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, by the Inter-American Development Bank, or by the Asian Development Bank.

(g) Demand, time or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency.

(h) Commercial paper and corporate debt securities. Investments under this subdivision in the paper or securities of any one obligor or maker shall not exceed the greater of (1) the amount a national bank having identical total capital and surplus could so invest in the paper or securities of any one obligor or maker, or (2) the amount a commercial bank, as defined in Section 105, having an identical shareholders' equity could so invest in the paper or securities of any one obligor or maker.

(i) Shares or certificates in any open-end management investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by the management company's investment policy, changeable only if authorized by

shareholder vote, primarily to investments authorized under this section.

(j) Bankers' acceptances of the kind, character, and maturity eligible for rediscount with a Federal Reserve bank, and such other bonds and securities as authorized by Article 2.5 (commencing with Section 7260) or as the commissioner may authorize by rules and regulations.

SEC. 39. Section 7250.5 is added to the Financial Code, to read:

7250.5. No savings association may directly or indirectly acquire or retain any corporate debt security unless the corporate debt security is rated in one of the four highest rating categories by at least one nationally recognized rating service.

SEC. 40. Section 7252 of the Financial Code is amended to read:

7252. (a) Notwithstanding any other provisions of this chapter, an association may, subject to regulations of the commissioner, invest in the capital stock, obligations, or other securities of service corporations.

(b) The total of all investments under this section shall not exceed 10 percent of the total assets of the savings association.

(c) A service corporation in which a savings association may invest shall only engage in those activities reasonably related to the activities of savings associations as the commissioner may approve.

(d) An association may make an investment under this section notwithstanding that the service corporation in which investment is authorized has invested in any other corporation (1) that is not incorporated in this state, or (2) that has stock available for purchase by persons other than associations.

SEC. 40.5. Section 7266 of the Financial Code is amended to read:

7266. Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, the Farm Credit Act of 1971, in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, and the Farm Credit Act of 1971, and in stocks, bonds, debentures, participations, and other obligations of, or issued by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

SEC. 41. Section 7350 of the Financial Code is repealed.

SEC. 41.5. Section 7350 is added to the Financial Code, to read:

7350. (a) An association may acquire and hold stock of one or more corporations the primary activities of which are engaging in real property investment, in which event the sum of (1) investments made by an association pursuant to the authority of this subdivision, (2) any loans and guarantees extended by an association to, or for the benefit of, corporations the stock of which it holds pursuant to the authority of this subdivision, and (3) real property investments made

pursuant to the authority of subdivision (b), unless a higher percentage is approved by the commissioner in writing, shall not exceed 10 percent of the total assets of the association.

(b) An association may engage in real property investment. The total of all real property investments made pursuant to the authority of this subdivision, unless a higher percentage is approved by the commissioner in writing, shall not exceed the total shareholders' equity of the association.

(c) Prior to initially engaging in real property investment activities authorized by subdivision (a) or (b), an association shall make application with the commissioner for approval of its general plan of real property investment. The application for approval shall be in letter form, shall contain a copy of the general plan for real property investment as approved or adopted by the board of directors of the association, which shall include a brief description of either the activities of the corporations the association will invest in or the activities the association will engage in, or both, the approximate amount to be invested, the extent, if any, of diversification of those activities or investment, and the approximate date of the initial investment, and shall be signed by the chief executive officer of the association. Unless the commissioner finds (1) that the capital, assets, management, earnings, and liquidity of the association are, on a composite basis, not satisfactory or (2) that the plan for the association to engage in real property investment or to acquire and hold the stock of one or more real property investment corporations is unsafe or unsound, the commissioner shall approve the application. An application for approval shall be deemed approved on the 46th day after the application is filed with the commissioner, unless the commissioner earlier makes a final decision on the application or extends the period for approving or denying the application. For purposes of this subdivision, an application for approval shall be deemed to be filed with the commissioner on the date when the application, substantially in compliance with the requirements of this subdivision, is received by the commissioner. Upon the filing of the application for approval, the applicant shall pay to the commissioner a filing fee of five hundred dollars ($500).

(d) As used in this section, "real property investment" means all forms of investing in real property, whether direct or in the form of partnerships, joint ventures, or other methods of investment. It includes, but is not limited to, the purchasing, subdividing, and developing of real property or any interest therein, the building of residential housing or commercial improvements, and the owning, renting, leasing, managing, operating for income, or selling of that property.

(e) The legality of any investment lawfully made pursuant to former Section 7350, as repealed by the act enacting this section, shall not be affected by this section, nor shall this section be construed to require the changing of any investments lawfully made prior to

January 1, 1991.

SEC. 42. Section 7451 of the Financial Code is amended to read:

7451. Except as otherwise provided by the commissioner, an association shall not make or acquire total loans with respect to one borrower or on one project in an amount exceeding 25 percent of the net worth of the association. As used in this section, "one borrower" has the meaning defined in Section 7453.

SEC. 43. Section 7453 of the Financial Code is amended to read:

7453. (a) An association may make, invest in, sell, purchase, participate in, or otherwise deal in secured or unsecured loans for agricultural, business, commercial, or corporate purposes, provided that the total investment in such loans does not exceed 10 percent of the assets of the association.

(b) An association may invest in, sell, purchase, participate in, or otherwise deal in loans specified in subdivision (a) which are originated by any savings association, federal association, holding company of a federally insured savings association, commercial bank, bank holding company, subsidiary of a bank holding company, or insurance company, provided that the total investment in such loans shall not exceed 10 percent of the association's assets.

(c) For the purposes of this section, the term "loan" does not include any corporate debt security unless it is rated in one of the four highest rating categories by at least one nationally recognized rating service.

(d) No association shall make, invest in, purchase, or participate in a loan for agricultural, business, commercial, or corporate purposes to one borrower, except as the commissioner may approve in writing, if the sum of the amount of the association's interest in the loan and the total balance of the association's interest in all outstanding loans for those purposes owed to the association by that borrower exceed the greater of (1) the amount a national bank having an identical total capital and surplus could lend to one borrower, or (2) the amount a commercial bank, as defined in Section 105, having an identical total shareholders' equity, capital notes, and debentures, could lend to one borrower. This subdivision shall not apply to loans (1) secured by real property, (2) sold without recourse, (3) on the security of the association's deposit accounts, or (4) of unsecured day funds, including federal funds or similar unsecured loans.

(e) As used in this section the term "one borrower" means:

(1) Any person that is, or upon the making of a loan will become, an obligor on the loans. However, a guarantor shall not be included within the meaning of "obligor" if, in connection with a loan the association has determined, in good faith, that the primary obligor has qualified for the loan irrespective of the existence of the guarantor. In the case of a loan that has been assumed by a third party with the consent of the association, the former debtor and any guarantor shall not be deemed to be an "obligor."

(2) Nominees of the obligor.

(3) All persons, trusts, syndicates, partnerships and corporations of which the obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or a record or beneficial stockholder owning 10 percent or more of the capital stock.

(4) If the obligor is a trust, syndicate, partnership or corporation, all trusts, syndicates, partnerships and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or record or beneficial stockholder owning 10 percent or more of the capital stock of the obligor.

SEC. 43.5. Section 7504 of the Financial Code is amended to read:

7504. Notwithstanding any other provision of law, an association may adjust the interest rate, payment, balance, or term-to-maturity on any loan secured by real property as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property during the loan term or at maturity exceeds the original appraised value, subject to the limitations of subdivision (b) and Section 341 of P.L. 97-320 (H.R. 6267, the Garn-St. Germain Depository Institutions Act of 1982).

(a) For the purposes of this section:

(1) "Fully amortized loan" means a loan in which, at inception of the loan, the entire principal balance, together with accrued interest, shall be payable with the scheduled term of the loan in substantially equal installments (excepting the last payment, which may be smaller than a regular scheduled payment).

(2) "Home loans" means loans made on the security of one- to four-unit residential dwellings (including condominiums and cooperatives), combinations of these dwellings and business property (where no more than 20 percent of the total appraised value of the real estate is attributable to the business use), farm residences and combinations of farm residences and commercial farm real property.

(3) "Nonamortized loan" means a loan in which none of the principal balance shall be payable prior to the maturity of the loan.

(4) "Open end line of credit" means a loan plan in which the association reasonably contemplates repeated transactions; the association may impose interest from time to time on the unpaid principal of the loan plan, and the amount of credit that may be extended to the borrower during the term of the loan plan (up to any limit set by the association) is generally made available to the extent that any outstanding principal balance is repaid.

(5) "Partially amortized loan" means a loan in which some but not

all of the principal balance, together with accrued interest, shall be payable prior to the maturity of the loan.

(6) "Reverse annuity mortgage" means an instrument which provides for periodic payments to be made to a homeowner based on accumulated equity. The payments are made monthly directly by the association, or are made through the purchase of an annuity from an insurance company. The loan becomes due on a specified date after disbursement of the entire principal amount of the loan or when a specified event occurs, such as sale of the property or death of the borrower. The interest rate on this instrument may be fixed, or may be adjusted periodically as provided by this section.

(b) Adjustments to the interest rate, payment, balance, or term-to-maturity on home loans shall be subject to the limitations of this subdivision.

(1) The loan term shall not exceed 40 years, with interest payable at least semiannually, except as expressly authorized by this section.

(2) The loan balance for other than nonamortized and open end line of credit loans shall be repayable in at least semiannual installments; provided, that loans on the security of farm residences and combinations of farm residences and commercial farm real property may be repayable in annual installments.

(3) The loan may be fully amortized, partially amortized, nonamortized, a reverse annuity mortgage, or an open end line of credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest, in the case of loans to natural persons secured by borrower-occupied real property and on which periodic advances are being made.

(4) (A) At origination, the loan-to-value ratio may not exceed the maximum permitted by Section 7509, as determined by the association's board of directors (but not more than 100 percent). During the term of the loan, the loan-to-value ratio may increase above the maximum percentage otherwise permissible if the increase results from an adjustment described in paragraph (3) or (5). The commissioner shall assume continued compliance with applicable loan-to-value limitations where the original loan-to-value ratio met the requirements of this paragraph, but in no event may the loan balance exceed 125 percent of the original appraised value of the security property during the term of the loan unless pursuant to clause (i) of subparagraph (B) of paragraph (5) of subdivision (b) or unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the 10th year of the loan, to a level sufficient to amortize the loan at the then existing interest rate and loan balance over the remaining term of the loan. However, this 125 percent limitation shall not apply to the portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property.

(B) If, at maturity of a loan secured by a home that provides for adjustments pursuant to paragraph (3) or (5), the ratio of the loan balance to the current market value of the security property exceeds

the maximum permissible amount under Section 7509, the association may offer to refinance the loan if (i) the refinanced loan complies with subdivision (b) of Section 7509 and (ii) the loan contract for the refinanced loan requires that, in addition to full or partial amortization of the loan, the pro rata portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment.

(5) For any home loan secured by borrower-occupied property or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term-to-maturity shall comply with the limitations of this paragraph.

(A) Adjustments to the interest rate shall correspond directly to the movement of an interest rate index or of a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to, and verifiable by, the borrower and is beyond the direct control of the association. An association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase and the time at which it may be made and which is set forth in the loan contract. An association, in its sole discretion, may decrease the interest rate at any time.

(B) Adjustments to the payment and the loan balance that do not reflect an interest rate adjustment may be made if: (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the direct control of the association; (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract; or (iii) in the case of an open end line of credit loan, the adjustment reflects an advance taken by the borrower under the line of credit, or a payment made by the borrower, that is permitted by the loan contract.

(C) Any combination of indices or a moving average of index values may be used as an index, and an association (i) may use more than one index during the term of a loan, if set forth in the loan contract and (ii) may provide for the selection of a substitute index by the association in the event the index being used is no longer available to or verifiable by the borrower or as otherwise provided in the loan contract.

(D) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide an association with the right to call the loan due and payable either after a specified period of time has elapsed following the date of the loan contract or as specified in a reverse annuity mortgage.

(6) For any home loan secured by borrower-occupied property and on which the interest rate may be adjusted pursuant to

paragraph (5), an association may not impose a prepayment charge on any prepayment made within 90 days of a required notice of an interest-rate increase with respect to the loan.

(c) Disclosure and notices for loans made pursuant to this section shall comply with the regulations codified in Section 563.99 of Title 12 of the Code of Federal Regulations.

SEC. 44. Section 7505.5 is added to the Financial Code, to read:

7505.5. (a) A savings association may make loans the principal purpose of which is to provide financing with respect to what is, or what is to become, primarily residential real estate, for which the association relies substantially on the borrower's general credit standing and projected future income for repayment, without other security, or relies on other assurances for repayment, including guarantees or other obligations of third parties.

(b) An association's aggregate investment in residential real estate loans described in subdivision (a) shall not exceed an amount equal to 5 percent of the association's assets.

SEC. 45. Section 7507 of the Financial Code is amended to read:

7507. (a) An association may make loans or advances of credit, or invest in interests therein, on the security of real property, which loans, advances of credit, or investments are not otherwise authorized under the law because of the following reasons:

(1) The loan-to-value ratio, stated maturity, or loan amount is in excess of the maximum allowable limits.

(2) Lack of any required borrower certification or required private mortgage insurance.

(3) The loan would cause an applicable percentage-of-assets category to be exceeded.

(4) A combination of the foregoing factors.

(b) Investments made under the authority of this section are subject to the following restrictions:

(1) No association shall have investments under this section aggregating at any one time more than 5 percent of its total assets.

(2) Each investment made under this section shall be fully documented to support the conclusion that it was made on a prudent basis.

(3) Loans made pursuant to this section shall comply with subparagraph (D) of paragraph (5), and paragraph (6), of subdivision (b), of Section 7504, where applicable.

SEC. 46. Section 7509 of the Financial Code is amended to read:

7509. (a) At the time of origination, a real estate loan may not exceed 100 percent of the market value of security property. An association shall, by vote of its board of directors, establish maximum loan-to-value-ratios for loans made on the security of real estate, and the resolution adopting those ratios shall be included in the minutes of the directors' meeting. Home loans, as defined in Section 7504, made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value-ratios adopted pursuant to this subdivision with the excess secured by the savings

account.

However, for loans orginated in excess of 90 percent of the initial appraised value of the security property, the savings account shall consist only of funds belonging to the borrower, the borrower's family, or the borrower's employer, and the loans shall not exceed the appraised value of the real estate.

(b) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property value shall be insured or guaranteed by a mortgage insurance company that the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer."

(c) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, an association's board of directors shall approve each of these loans prior to its origination and that approval shall be recorded in the minutes of its meeting.

(d) An association shall not make a loan secured by unimproved real property if the loan-to-value ratio would exceed 80 percent of the appraised value of the unimproved real property securing the loan.

(e) In determining compliance with maximum loan-to-value-ratio limitations for real estate loans, at the time of making a loan an association shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens, or other encumbrances on the security property that would have priority over the association's lien, and shall not make such a loan unless the total amount of those loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value-ratio limitations prescribed in this subdivision. In determining the value of the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed.

(f) "Value" for a real estate loan means the market value of the real estate.

SEC. 46.5. Section 7675 of the Financial Code is amended to read:

7675. (a) Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made or arranged by, or forbearances of, an association; a federal association; a qualified foreign savings association; an entity that is a savings and loan holding company; a subsidiary of a savings and loan holding company that is not an association; or a service corporation which is a subsidiary of an association, a federal association, or a qualified foreign savings association. As used in this section, the terms "savings and loan holding company" and "subsidiary" mean a savings and

loan holding company or a subsidiary, as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a), and the term "service corporation" means a service corporation described in Section 5(c) (4) (B) of the Home Owners' Loan Act of 1933 (12 U.S.C. Sec. 1464), as amended, or Section 7252, or a wholly owned subsidiary referred to in Section 7300.

(b) Subdivision (a) creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution. Notwithstanding any other provision of law, subdivision (a) does not exempt an association; a federal association; a foreign savings association; a savings and loan holding company, a subsidiary of a savings and loan holding company; a service corporation which is a subsidiary of an association; a federal association, or foreign savings association from complying with all other law and regulations governing the business in which the association, federal association, foreign savings association, savings and loan holding company, subsidiary of a savings and loan holding company, or service corporation which is a subsidiary of an association, a federal association, or a foreign savings association is engaged.

(c) For purposes of this section, "foreign savings association" means a foreign savings association as defined in Chapter 10 (commencing with Section 10000) or Chapter 10.1 (commencing with Section 10010) and "qualified foreign savings association" means a foreign savings association that has been authorized to conduct the business of an association in this state by the commissioner.

SEC. 46.7. Section 8050 of the Financial Code is amended to read:

8050. (a) The commissioner shall have general supervision over all (1) associations, (2) savings and loan holding companies, (3) service corporations, (4) finance subsidiaries, and (5) other persons that are subject to the provisions of this division.

(b) The commissioner shall enforce the purposes of this division by use of the powers conferred by it and by an action in any court of competent jurisdiction if required.

SEC. 47. Section 8156 of the Financial Code is amended to read:

8156. (a) Each association shall at least annually cause its books and accounts to be audited at its own expense by a certified public accountant or firm of certified public accountants selected by the association and approved by the commissioner.

(b) The annual audit date and audit period shall be approved in writing by the commissioner prior to commencement of the audit.

(c) Each savings association which engages certified public accountant services for any audit shall transmit to the accountant or accountants copies of the most recent report of condition made by the association pursuant to state or federal law and a copy of the most recent report of examination received by the savings association.

(d) In addition to the copies of the reports required to be provided pursuant to subdivision (c), each savings association shall

provide the auditing accountant or accountants with all of the following:

(1) A copy of any supervisory memorandum of understanding with the association and any written agreement between the association and any federal financial regulatory agency or the commissioner which is in effect during the period covered by the audit.

(2) A report of any action initiated or taken pursuant to subdivisions (a), (b), (c), (e), (g), (i), or (s) of Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), and a report of any action taken by the commissioner pursuant to Section 8200 or 8201, or any other civil monetary penalty assessed under any provision of law with respect to the savings association or any institution-affiliated party.

SEC. 48. Section 8160 of the Financial Code is repealed.

SEC. 49. Section 8160 is added to the Financial Code, to read:

8160. If an association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company fails to report to the commissioner as required by this article, the commissioner may impose penalties in accordance with the following:

(a) Any association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company which (1) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error (A) fails to make, obtain, transmit, or publish any report or information required by the commissioner by the due date set forth in this article or, if no due date is set forth in this article, the date specified by the commissioner, or (B) submits or publishes any false or misleading report or information or (2) inadvertently transmits or publishes any report which is minimally late, shall be subject to a civil penalty of not more than two thousand dollars ($2,000) for each day during which the failure continues or the false or misleading information is not corrected. The association, savings and loan holding company, or subsidiary of an association or savings and loan holding company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(b) Any association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company which (1) fails to make, obtain, transmit, or publish any report or information required by the commissioner by the due date set forth in this article or, if no due date is set forth in this article, the date specified by the commissioner or (2) submits or publishes any false or misleading report or information, in a manner not described in subdivision (a) shall be subject to a civil penalty of not more than twenty thousand dollars ($20,000) for each day during which the failure continues or the false and misleading information is not corrected.

(c) Any association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company which knowingly or with reckless disregard for the accuracy of any information or report subject to this section submits or publishes any false or misleading report or information, shall be subject to a civil penalty of not more than one million dollars ($1,000,000) or 1 percent of total assets of the savings institution, whichever is less, per day for each day during which the false or misleading information is not corrected.

(d) Any penalty imposed under subdivisions (a), (b), or (c) shall be assessed and collected by the commissioner in the same manner as provided in Section 5330.

SEC. 50. Section 8200 of the Financial Code is repealed.

SEC. 51. Section 8200 is added to the Financial Code, to read:

8200. The commissioner may issue cease and desist orders which may order affirmative action in accordance with the following:

(a) If the commissioner, as a result of any examination or from any report, finds or has reasonable cause to believe (1) that any savings association, savings and loan holding company or any of their subsidiaries, or an institution-affiliated party, (A) is violating or has violated any provision of this division or the laws of this state or of the United States or any order, regulation, or any condition imposed in writing by the commissioner in connection with the granting of any application of an association or any written agreement entered into with the commissioner or (B) is engaging or has engaged in an unsafe or unsound business practice, or (2) that an association, savings and loan holding company, or any of their subsidiaries are maintaining books and records that are so incomplete and inaccurate that the commissioner is unable, through the normal supervisory process, to determine their financial condition or the details or purpose of any transaction that may have a material effect on their financial condition, the commissioner may issue a formal written order to be served by delivery to the home office of the association or to the person named in the order. The order shall state the alleged violation or practice and state the facts in support of the allegation, and shall order discontinuance of the violation or practice and order conformance with all requirements of law. The commissioner may require the association or other named person to take affirmative action (A) to prevent the insolvency or dissipation of assets of the association, or (B) to restore the books and records to a complete and accurate state.

(b) The authority of the commissioner to issue orders to correct any conditions resulting from any violation or practice includes the authority to require the person named in the order to do any of the following:

(1) Make restitution or provide reimbursement, indemnification, or guarantee against loss if (A) the person named in the order was unjustly enriched in connection with the violation or practice or (B) the violation or practice involved a reckless disregard for any state

or federal statute or applicable regulations or prior order of the commissioner.

(2) Restrict the growth of the association.

(3) Dispose of any loan or asset involved.

(4) Rescind agreements or contracts.

(5) Employ qualified officers or employees (who may be subject to prior approval of the commissioner at his or her direction).

(6) Take such other action as the commissioner determines to be appropriate.

(c) The authority to issue orders includes the authority to place limitations on the activities or functions of the person named in the order.

(d) The order shall specify an effective date, which may be immediate or may be at a later date, and shall remain in effect until withdrawn by the commissioner or until terminated by a court order.

(e) Any association or person affected by an order of the commissioner may apply within 10 days after service of the order to a court having jurisdiction for an immediate hearing and may request a stay of the order until the hearing has been completed. The hearing shall be held as provided in a notice to the commissioner by the court.

(f) The commissioner may, on or after the effective date of the order, apply for enforcement of the order to the superior court in the county in which the home office of the association or the person is located. The order shall be enforced ex parte and without notice by the court. The proceedings shall be given precedence over other cases pending in court, and shall in every way be expedited.

(g) Whether upon application by the commissioner or by the person named in the order, the court shall have jurisdiction, shall adjudicate the question, and shall enter and enforce the proper order or orders.

SEC. 52. Section 8201 of the Financial Code is repealed.

SEC. 53. Section 8201 is added to the Financial Code, to read:

8201. (a) Whenever the commissioner determines that any institution-affiliated party or any director, officer, or employee of a savings and loan holding company or affiliate thereof has committed any of the following violations, engaged or participated in any of the following unsafe or unsound practices, or committed any of the following breaches of fiduciary duty that meet the additional criteria of subdivision (b), the commissioner may serve upon that person a written notice of the commissioner's intent to order the removal of the person from his or her office or employment or to prohibit any further participation (in any manner) in the conduct of the affairs of any savings association, or both:

(1) Violation of any statute or regulation, any cease and desist order which has become final, any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the savings association or any written agreement between the savings institution and the commissioner.

(2) Engaging or participating in any unsafe or unsound practice in connection with any savings association.

(3) Committing or engaging in any act, omission, or practice which constitutes a breach of the person's fiduciary duty.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the commissioner's authority under this section if the commissioner finds both of the following:

(1) By reason of the violation, practice, or breach (A) the savings association has suffered or will probably suffer financial loss or other damage (B) the interests of the savings association's depositors have been or could be prejudiced, or (C) the institution-affiliated party or other person specified in subdivision (a) has received financial gain or other benefit by reason of the violation, practice, or breach.

(2) The violation, practice, or breach (A) involves personal dishonesty on the part of the institution-affiliated party or other person specified in subdivision (a) or (B) demonstrates willful or continuing disregard by the institution-affiliated party or other person for the safety or soundness of the savings institution.

(c) The written notice shall contain a full statement of the alleged violations, practices, or breaches of fiduciary duty, shall state the facts alleged in support of the violation, practice or breach, and shall state the commissioner's intention to enter a removal or prohibition order, or both. The notice shall be delivered to the board of directors of the association, savings and loan holding company, or subsidiary, and to the institution-affiliated party or other director, officer, or employee concerned. If a hearing on the matter is requested within 10 days after service of the written notice, the commissioner shall hold a public hearing at which any pertinent evidence relating to the matters set forth in the written notice may be presented. After the hearing, the commissioner, on the basis of the evidence presented at the hearing, may proceed to enter (1) an order for the immediate removal of the institution-affiliated party or director, officer, or employee affected, (2) an order prohibiting further participation by the person, in any manner, in the conduct of the affairs of any savings association, (3) a reprimand of the individuals and entities or other persons concerned, or (4) a dismissal of the entire matter.

(d) If no hearing is requested within the time specified, the commissioner may proceed to issue orders of removal, prohibition, or both on the basis of the facts set forth in the written notice.

(e) No institution-affiliated party or director, officer, or employee who has been removed from his or her position pursuant to a removal order that has become final, shall thereafter participate in any manner in the conduct of the affairs of the savings association from or with respect to which that director, officer, or employee was removed, or without prior written approval of the commissioner, serve as a director, officer, or employee of any other savings association. No institution-affiliated party, including an officer, director, or employee, who is subject to an order of prohibition which has become final shall thereafter participate, in any manner, in the

conduct of the affairs of any savings association.

(f) In respect to any officer, director, or employee of a savings association, savings and loan holding company or subsidiary thereof who is the subject of a written notice served by the commissioner pursuant to subdivision (a), the commissioner may, if the commissioner deems it necessary for the protection of the savings association or the interests of the association's depositors, by written notice to that effect served upon the officer, director, employee, suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the savings association or related entity, or take both these actions. The suspension or prohibition shall become effective upon service of the notice and, unless stayed by the court in proceedings authorized by subdivision (g), shall remain in effect pending completion of the proceedings pursuant to the written notice served under subdivision (a) and until the effective date of an order entered by the commissioner under subdivision (c) or (d). Copies of the notice shall also be served upon the savings association, savings and loan holding company, or subsidiary of which the person is a director, officer, or employee.

(g) Within 10 days after any director, officer, or employee has been suspended from office or prohibited from participation in the conduct of the affairs of a savings association, savings and loan holding company, or subsidiary thereof under subdivision (f), the director, officer, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings pursuant to subdivision (c), and the court shall have power to stay the suspension or prohibition.

SEC. 54. Section 8202 is added to the Financial Code, to read:

8202. (a) The commissioner shall publish and make the following available to the public:

(1) Any final order issued with respect to any administrative enforcement proceeding initiated by the commissioner pursuant to this division or any other provision of law.

(2) Any modification to, or termination of, any final order specified in paragraph (1).

(b) If the commissioner makes a determination in writing that the publication of any final order pursuant to subdivision (a) would seriously threaten the safety or soundness of a savings association, the commissioner may delay the publication of the order for a reasonable time.

SEC. 55. Section 8253 of the Financial Code is amended to read:

8253. If the association is an institution insured by the Federal Deposit Insurance Corporation, the Federal Deposit Insurance Corporation shall be tendered appointment as receiver or coreceiver. If it accepts the appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or coreceiver, provided the loan or purchase is approved by the court.

SEC. 56. Section 10000 of the Financial Code is amended to read:

10000. Terms not expressly defined in this chapter have the meaning given in Chapter 1 (commencing with Section 5000) or as the commissioner may provide by regulation. For the purposes of this chapter:

(a) "California savings association" means either (1) an association or (2) a foreign association or successor thereof that was licensed to do the business of an association in California on September 15, 1935.

(b) "Foreign holding company" means a savings and loan holding company as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a) or bank holding company as defined in Section 3 of the federal Bank Holding Company Act, as amended, (12 U.S.C. Sec. 1841 et seq.), which savings and loan or bank holding company (1) has its principal place of deposits outside of California and (2) does not control a subsidiary California savings association or a subsidiary federal association with, or a subsidiary foreign savings association with, an authorized home or branch office in California at which accounts may lawfully be opened and deposits may lawfully be accepted.

(c) "Foreign savings association" means an insured institution other than a California savings association and other than a federal association.

(d) "Insured institution" means an entity: (1) the deposits of which are insured by the Federal Deposit Insurance Corporation, (2) which is chartered by the Office of Thrift Supervision, or (3) which, because of its assets or activities, has a holding company that is regulated as a savings and loan holding company under Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a).

(e) The "principal place of deposits" of an entity is that state in which the total deposits of all of that entity's depository operations and those of its affiliates are largest.

SEC. 57. Section 10010 of the Financial Code is amended to read:

10010. Terms not expressly defined in this chapter have the meaning given in Chapter 1 (commencing with Section 5000) or as the commissioner may provide by regulation. For the purposes of this chapter:

(a) "California savings association" means either (1) an association or (2) a foreign association or successor thereof that was licensed to do the business of an association in California on September 15, 1935.

(b) "Foreign holding company" means a savings and loan holding company as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a) or bank holding company as defined in Section 3 of the federal Bank Holding Company Act, as amended, (12 U.S.C. Sec. 1841 et seq.), which savings and loan or bank holding company (1) has its principal place of deposits outside of California and (2) does not control a subsidiary California savings association or a subsidiary federal association with, or a subsidiary foreign savings

association with, an authorized home or branch office in California at which accounts may lawfully be opened and deposits may lawfully be accepted.

(c) "Foreign savings association" means an insured institution other than a California savings association and other than a federal association.

(d) "Insured institution" means an entity: (1) the deposits of which are insured by the Federal Deposit Insurance Corporation, (2) which is chartered by the Office of Thrift Supervision, or (3) which, because of its assets or activities, has a holding company that is regulated as a savings and loan holding company under Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a).

(e) The "principal place of deposits" of an entity is that state in which the total deposits of all of that entity's depository operations and those of its affiliates are largest.

SEC. 58. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1119

An act to add and repeal Section 807 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 807 is added to the Unemployment Insurance Code, to read:

807. (a) The Santa Cruz County Symphony Association may elect reimbursement financing under Section 801 when the director finds that the association made a good faith error in the classification of individuals providing services to the association.

(b) Notwithstanding subdivision (c) of Section 801, when an election is made pursuant to subdivision (a), it shall be from the time the Santa Cruz County Symphony Association became an employer.

(c) To the extent permitted by federal law, if the Santa Cruz County Symphony Association has a favorable reserve account on the date it makes the election, it shall not be liable for the

reimbursement of benefits pursuant to the election except to the extent the cost of benefits exceeds the sum of the amount in the reserve account and the full amount of any previous assessment for unemployment benefits, including interest and penalties charged by the department, which has been paid by the association prior to election.

(d) Notwithstanding Section 1029, the reserve account of the Santa Cruz County Symphony Association shall not be canceled and the cost of benefits otherwise chargeable to the association shall be charged to the reserve account until it is exhausted.

(e) An election pursuant to this section shall be made only once.

(f) Payment of the cost of benefits shall be as provided in Section 803 except that benefits paid more than 90 days prior to the date of election under this section shall accrue interest as provided in Section 1113, and except that interest shall not accrue when the cost of benefits paid does not exceed the amount in the reserve account of the Santa Cruz County Symphony Association.

(g) Except as otherwise provided, the election under Section 801 made pursuant to this section shall be subject to all provisions of Section 803.

(h) Subdivisions (c) and (d) shall not be implemented unless the Director of Employment Development determines that this section is approved by the United States Department of Labor. The Director of Employment Development shall immediately seek this approval from the United States Department of Labor.

(i) 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.

CHAPTER 1120

An act to amend Section 16500.5 of, and to add Section 16500.51 to, the Welfare and Institutions Code, relating to child welfare services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

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

(a) In the current year, the average daily population of youths who have been removed from their home under the authority of the juvenile court and placed in county facilities, foster care, or the Department of the Youth Authority, will be about 25,000.

(b) Although juvenile arrest rates and the juvenile population

have been declining over the past five years, the number of juveniles placed in these facilities has grown dramatically. This increase is due to both increasing admissions and longer stays. As a result, California has the highest juvenile custody rate of any state in the nation for county and state facilities combined.

(c) Probation departments and the juvenile courts have very limited options for the treatment of wards. The majority of wards either stay at home with limited supervision by probation departments, or they are removed from the home and placed in 24-hour care facilities.

(d) The current funding arrangements provide fiscal incentives for counties to place wards in particular facilities based on the state and county share of costs, rather than on the treatment needs of the ward and the total cost of the placement.

(e) It is not uncommon for a ward at one time to have been a dependent of the court due to parental abuse, neglect, or exploitation. In fact, wards tend to be similar to dependents of the court with regard to their psychological health, educational achievements, and family situations.

(f) The State of California has successfully addressed this problem through a system of flexible reimbursement to prevent out-of-home placement for children who are dependents of the court because of abuse and neglect.

(g) The need exists to help counties address the pressing need for counties to develop a continuum of care for juveniles through testing a system of flexible reimbursement in the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program.

SEC. 2. It is the intent of the Legislature, in the enactment of this act, to provide for a system of flexible reimbursement for children who have been adjudicated wards of the court pursuant to Sections 601 and 602 of the Welfare and Institutions Code in order to evaluate its potential as an efficient, economical, and effective alternative to placement in 24-hour care facilities.

SEC. 3. 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 families to avoid or limit out-of-home placement of children through a family preservation program serving children who are at imminent risk of placement and would be eligible for AFDC-FC if they were placed out of their own homes.

(B) Providing supportive services for those children within the meaning of Sections 361 and 364 when they are returned to the family unit or when a minor will probably soon be within the jurisdiction of the juvenile court pursuant to Section 330.

(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 establish 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) (i) No more than three participating counties selected by the State Department of Social Services, one of which shall be Solano County, on a two-year 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 conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 330, 361, and 364.

(ii) The department or a participating county may terminate a county's participation in the program upon 30 days' notice if the project is deemed unsuccessful by either party.

(iii) For each fiscal year of the two-year program, a participating county may claim in advance an amount up 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.

(iv) 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 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 program year the sum of a participating county's total AFDC-FC General Fund expenditures for their children, added to the amount expended from the advance 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 expended from the advance 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 expended from the advance 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 program.

(4) Services which may be provided under this program may include, but are not limited to, counseling, parenting, respite, day treatment, transportation, 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. Each county may contract with individuals and organizations for services to be provided pursuant to this section.

(5) (A) Participating counties authorized by this subdivision shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of the following:

(i) Children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364.

(ii) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361.

(iii) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 330.

(B) The county welfare department social worker may return a dependent minor removed from the home pursuant to Section 361, with appropriate program services, pursuant to an appropriate court order.

(6) 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 services or to be children who can be returned to their families with the provision of services.

(7) 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 services under this subdivision than that amount which would be expended for placement in out-of-home care.

(8) The program in each county shall be deemed successful if at least 75 percent of the children receiving services remain in their own home for six months after termination of services, and if 60 percent remain at home one year after services are terminated. With respect to children selected to receive services who have already been removed from their home and placed in out-of-home care, the

county program 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 of children who do not receive program services.

(9) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506.1 and 16507.1.

(10) Each county participating in the program authorized by this section may, subject to the approval of the department, continue to utilize the advance fund-claiming mechanism specified in paragraph (1) after the completion of the two-year program, on a two-year basis, if it demonstrates the successful outcome of the county program, based on the criteria for success specified in paragraph (8).

(11) The department shall submit a report to the Legislature that includes data from each participating 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 three pilot projects with a final report to be submitted after pilot project completion. Programs authorized after the original pilot projects shall submit data to the department upon the department's request. Subsequent reports to the Legislature on the programs administered pursuant to this section shall be included with the child welfare system report to the Legislature.

(c) A county welfare department social worker or probation officer may, pursuant to an appropriate court order, return a dependent minor or ward of the court removed from the home pursuant to Section 361 to his or her home, with appropriate interagency family preservation program services.

(d) State foster care funds shall remain within the administrative authority of the county welfare department and shall be used only for placement services or placement prevention services or county welfare department administrative cost related to the interagency family preservation program.

(e) To the extent permitted by federal law, any federal funds provided for services to families and children may be utilized for the purposes of this section.

SEC. 4. Section 16500.51 is added to the Welfare and Institutions Code, to read:

16500.51. (a) In addition to participation in the program provided for under Section 16500.5, Solano and Alameda Counties may, on a two-year project basis, and subject to the election of the board of supervisors of each county to participate, expand the program provided for in Section 16500.5 to also provide those family preservation services to:

(1) Children who have been adjudged wards of the court pursuant to Sections 601 and 602.

(2) Families of children subject to Section 726 and 727.

(b) Except as otherwise provided in this section, the expanded

programs authorized under this section shall be subject to all of the provisions of Section 16500.5 and shall be administered in accordance with Section 16500.5, including, but not limited to, the funding mechanism set forth in paragraph (1) of subdivision (b) of Section 16500.5.

(c) The county probation department, through an interagency agreement with the county welfare department, may refer cases to the county welfare department for the provision of services under this subdivision.

(d) The county shall ensure that the proportion of funds used for family preservation services for families and children needing these services pursuant to Sections 300, 330, 361, and 364 shall be no less than the proportion of those children in the county's foster care population.

(e) A dependent minor or ward of the court removed from the home pursuant to Section 726 may also be returned to his or her home with appropriate interagency family preservation services as provided in subdivision (c) of Section 16500.5.

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 uninterrupted delivery of services which prevent the destruction or disruption of families, it is necessary for this act to take effect immediately.

CHAPTER 1121

An act to amend Sections 1006 and 29505 of, and to add Section 1006.3 to, the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 1006 of the Elections Code is amended to read:

1006. (a) Any printed application which is to be distributed to voters for requesting absent voter ballots shall contain spaces for the following:

(1) The printed name and residence address of the voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The voter's signature.

(4) The name and date of the election for which the request is to be made.

(5) The date the application must be received by the clerk.

(b) (1) The information required by paragraphs (1), (4), and (5) of subdivision (a) may be preprinted on the application. The information required by paragraphs (2) and (3) of subdivision (a) shall be personally affixed by the voter.

(2) An address, as required by paragraph (2) of subdivision (a), may not be the address of any political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that an absentee ballot be mailed to the candidate's residence address.

(3) Any application which contains preprinted information shall contain a conspicuously printed statement, as follows: "You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside."

(c) The application shall provide the voters with information concerning the procedure for establishing permanent absentee voter status, and the basis upon which permanent absentee voter status is claimed.

(d) The application shall be attested to by the voter as to the truth and correctness of its content, and shall be signed under penalty of perjury.

SEC. 2. Section 1006.3 is added to the Elections Code, to read:

1006.3. (a) Any organization or group that distributes applications for absent voter ballots and receives completed application forms shall return the forms to the appropriate elections official within 36 hours of receiving the completed forms. The name of any organization which authorizes the distribution of the applications shall be included on the application.

(b) Any application for an absent voter's ballot which is sent by a group or organization to a voter shall be nonforwardable. Any absent voter's ballot which is returned to an elections official as undeliverable shall not be forwarded by the elections official.

SEC. 3. Section 29505 of the Elections Code is amended to read:

29505. Any individual, group, or organization which knowingly distributes any application for an absent voter's ballot which does not conform to the requirements of Chapter 1 (commencing with Section 1000) of Division 2 is guilty of a misdemeanor.

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.

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. 5. This act shall become operative on July 1, 1990.

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 changes to the law proposed by this act be in effect in time for the 1990 general election, it is necessary that this act take effect immediately.

CHAPTER 1122

An act to amend Section 1861.025 of the Insurance Code, relating to insurance.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 1861.025 of the Insurance Code is amended to read:

1861.025. A person is qualified to purchase a Good Driver Discount policy if he or she meets all of the following criteria:

(a) He or she has been licensed to drive a motor vehicle for the previous three years.

(b) During the previous three years, he or she has not done any of the following:

(1) Had more than one violation point count determined as provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section 12810 of the Vehicle Code, but subject to the following modifications:

For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault which resulted only in damage to property shall receive one violation point count, in addition to any other violation points which may be imposed for this accident.

If under Section 488 or 488.5 an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code which was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that would have resulted in the imposition of more than one violation

point count under paragraph (1) if the complaint had not been dismissed.

(3) Been found to be in violation of Section 23140 of the Vehicle Code.

(4) Was the driver of a motor vehicle involved in an accident which resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the their determination of fault for the purposes of this paragraph and paragraph (1) of subdivision (b).

(c) Any person who claims that he or she meets the criteria of subdivisions (a) and (b) based entirely or partially on a driver's license and driving experience acquired anywhere other than in the United States or Canada is rebuttably presumed to be qualified to purchase a good driver discount policy if he or she has been licensed to drive in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (a) and (b) for that period.

CHAPTER 1123

An act to amend Sections 8150.8 and 8153 of the Fish and Game Code, relating to sardines, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 8150.8 of the Fish and Game Code is amended to read:

8150.8. Any sardine quota established by the department under Section 8150.7 shall be allocated in the following manner into two quotas, one for southern California and one for northern California, with the boundary division at San Simeon Point in San Luis Obispo County. The allocation shall be as follows:

(a) One-third of the quota shall be reserved for fishermen landing their catches north of San Simeon Point. However, no sardines may be taken under this subdivsion for commercial purposes, except a taking incidental to other fishing operations, before August 1 of any calendar year.

(b) Two-thirds of the quota shall be reserved for fishermen landing their catches south of San Simeon Point.

SEC. 2. Section 8153 of the Fish and Game Code is amended to read:

8153. (a) In addition to any other provision of this article, 250 tons of sardines may be taken, possessed, and landed for dead bait purposes during the period March 1 to February 28. Sardines may not

be taken for dead bait purposes except by fishermen operating under permits issued by the department pursuant to Section 8150.7.

(b) Whenever the department, under Section 8150.7, establishes a quota of 2,500 tons or more for the sardine fishery, the quota for dead bait provided for in subdivision (a) shall be 500 tons.

(c) The take of sardines authorized by this section shall be allocated in the following manner:

(1) Sixty-two tons shall be reserved for fishermen landing sardines north of Pescadero Point.

(2) Sixty-two tons shall be reserved for fishermen landing their catches between Pescadero Point and San Simeon Point.

(3) The remaining quota shall be reserved for fishermen landing their catches south of San Simeon Point.

(d) Any fisherman taking or possessing sardines for use as dead bait shall be in possession of a bona fide, written, and dated order from the commercial fish business which placed the order for the sardines.

(e) Sardines taken, possessed, or sold for dead bait purposes shall be landed and kept in a whole condition until sold to a sportfisherman for use as bait.

(f) The fish receipt for any landing of sardines for dead bait purposes shall be completed at the time the landing is made and shall include the words "FOR DEAD BAIT PURPOSES ONLY" on the line designating use.

CHAPTER 1124

An act to add and repeal Section 4686 of the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 4686 is added to the Welfare and Institutions Code, to read:

4686. (a) Notwithstanding any other provision of law, an in-home respite worker may perform gastrostomy care and feeding of clients of regional centers, after successful completion of training as provided in this section.

(b) In order to be eligible to receive training for purposes of this section, an in-home respite worker shall submit to the trainer proof of successful completion of a first aid course and successful completion of a cardiopulmonary resuscitation course within the preceding year.

(c) The training in gastrostomy care and feeding required under this section shall be provided by physicians or registered nurses

through a gastroenterology or surgical center in an acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, which meets California Children Services' Program standards for centers for children with congenital gastrointestinal disorders, or comparable standards for adults, or by a physician or registered nurse who has been certified to provide training by the center.

(d) The gastroenterology or surgical center providing the training shall develop a training protocol which shall be submitted for approval to the State Department of Developmental Services. The department shall approve those protocols which specifically address all of the following:

(1) Care of the gastrostomy site.

(2) Performance of gastrostomy tube feeding.

(3) Identification of, and appropriate response to, problems and complications associated with gastrostomy care and feeding.

(4) Continuing education requirements.

(e) Training by the gastroenterology or surgical center, or the certified physician or registered nurse, shall be done in accordance with the approved training protocol. Training of in-home respite workers shall be specific to the individual needs of the developmentally disabled regional center client receiving the gastrostomy feeding and shall be in accordance with orders from the client's treating physician or surgeon.

(f) The primary care physician shall give assurances to the regional center that the patient's condition is stable prior to the regional center's purchasing in-home gastrostomy care for the client through an appropriately trained respite worker.

(g) Prior to the purchase of in-home gastrostomy care through a trained respite worker, the regional center shall do all of the following:

(1) Ensure that a nursing assessment of the client, performed by a registered nurse, is conducted to determine whether an in-home respite worker, licensed vocational nurse, or registered nurse may perform the services.

(2) Ensure that a nursing assessment of the home has been conducted to determine whether gastrostomy care and feeding can appropriately be provided in that setting.

(h) The agency providing in-home respite services shall do all of the following:

(1) Ensure adequate training of the in-home respite worker.

(2) Ensure that telephone backup and emergency consultation by a registered nurse or physician is available.

(3) Develop a plan for care of the gastrostomy site and for gastrostomy tube feeding to be carried out by the respite worker.

(4) Ensure that the in-home respite worker and the gastrostomy services provided by the respite worker are adequately supervised by a registered nurse.

(i) For purposes of this section, "in-home respite worker" means

an individual employed by an agency which is vendored by a regional center to provide in-home respite services. These agencies include, but are not limited to, in-home respite services agencies, home health agencies, or other agencies providing these services.

(i) 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. 2. The State Department of Developmental Services shall submit a report to the Legislature no later than January 1, 1993, which describes the implementation of the program authorized pursuant to Section 4686 of the Welfare and Institutions Code, and makes recommendations regarding the potential for expanding the program to serve other groups of developmentally disabled people, including those that are ventilator dependent.

CHAPTER 1125

An act to amend, add, and repeal Section 701.040 of the Code of Civil Procedure, and to amend, add, and repeal Sections 9501, 9502, and 9504 of the Commercial Code, relating to remedies.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 701.040 of the Code of Civil Procedure is amended to read:

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Sections 9502 and 9504 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

(c) This section shall be repealed on January 1, 1996.

SEC. 1.5. Section 701.040 is added to the Code of Civil Procedure, to read:

701.040. (a) Except as otherwise ordered by the court upon a

determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Section 9504 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

SEC. 2. Section 9501 of the Commercial Code is amended to read:

9501. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter and except as limited by subdivision (3) those provided in the security agreement. The secured party may reduce his or her claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9207. The rights and remedies referred to in this subdivision are cumulative.

(2) After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement and those provided in Section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subdivisions referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subdivision (3) of Section 9504 and Section 9505) and with respect to redemption of collateral (Section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) Subdivision (2) of Section 9502 and subdivision (2) of Section 9504 insofar as they require accounting for surplus proceeds of collateral and deal with the debtor's liability for any deficiency;

(b) Subdivision (3) of Section 9504 and subdivision (1) of Section 9505 which deal with disposition of collateral;

(c) Subdivision (2) of Section 9505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9506 which deals with redemption of collateral; and

(e) Subdivision (1) of Section 9507 which deals with the secured party's liability for failure to comply with this chapter.

(4) If an obligation secured by personal property or fixtures (Section 9313(1)(a)) is also secured by real property:

(a) The secured party may do any of the following:

(i) Proceed, in any sequence, (1) in accordance with the secured party's rights and remedies in respect of real property as to the real property security, and (2) in accordance with this chapter as to the personal property or fixtures.

(ii) Proceed in any sequence, as to both some or all of the real property and some or all of the personal property or fixtures in accordance with the secured party's rights and remedies in respect of the real property, by including the portion of the personal property or fixtures selected by the secured party in the judicial or nonjudicial foreclosure of the real property in accordance with the procedures applicable to real property. In proceeding under this subparagraph, a power of sale under the deed of trust or mortgage shall be exercisable with respect to both the real property and the personal property or fixtures being sold, and the sale may be conducted by the mortgagee under the mortgage or by the trustee under the deed of trust. The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property has been actually disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.

(iii) Proceed, in any sequence, as to part of the personal property or fixtures as provided in subparagraph (i), and as to other of the personal property or fixtures as provided in subparagraph (ii).

(b) Except as otherwise provided in paragraph (c), provisions and limitations of any law respecting real property and obligations secured by real property, including, but not limited to, Section 726 of the Code of Civil Procedure, provisions regarding acceleration or reinstatement of obligations secured by real property, prohibitions against deficiency judgments, and limitations on the right to proceed as to collateral, do not in any way apply to either (1) any personal property or fixtures as to which the secured party has proceeded or is proceeding in accordance with the secured party's rights and remedies as permitted under this chapter, or (2) the obligation secured by the personal property or fixtures.

(c) (i) Paragraph (b) does not limit the application of Section 580b of the Code of Civil Procedure.

(ii) If, in proceeding solely with respect to personal property or fixtures, the secured party commences a judicial action against the debtor (subdivision (1) or (5)), that judicial action shall constitute an action within the meaning of Section 726 of the Code of Civil Procedure if and only if a monetary judgment on the debt is sought against the debtor, and that action shall result in the subsequent unenforceability of the encumbrance on any real property not

included in that action only if and when a monetary judgment on the debt is obtained against the debtor.

(iii) Nothing in paragraph (b) shall be construed to excuse compliance with Section 2924c of the Civil Code as a prerequisite to the nonjudicial sale of real property, but that section has no application to the right of a secured party to proceed as to personal property or fixtures.

(iv) Paragraph (b) does not deprive the debtor of the protection of Section 580d of the Code of Civil Procedure against a deficiency judgment following a sale of the real property collateral pursuant to a power of sale in a deed of trust or mortgage.

(v) Paragraph (b) does not apply to a loan or credit sale made to any individual primarily for personal, family, or household purposes.

(d) If the secured party realizes proceeds from the disposition of collateral that is personal property or fixtures, the following provisions shall apply:

(i) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any nonmonetary default.

(ii) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any monetary default (although the application of the proceeds shall, to the extent of those proceeds, satisfy the secured obligation) so as to affect in any way the secured party's rights and remedies under this chapter with respect to any remaining personal property or fixtures collateral.

(e) An action by the secured party utilizing any available judicial procedure, as provided in subdivision (1), shall in no way be affected by omission of a prayer for a monetary judgment on the debt. A judicial action which neither prays for nor results in a monetary judgment on the debt shall not preclude a subsequent action seeking a monetary judgment on the debt.

(f) As used in this subdivision, "monetary judgment on the debt" means a judgment for the recovery from the debtor of all or part of the principal amount of the secured obligation, including, for purposes of this subdivision, contractual interest thereon. "Monetary judgment on the debt" does not include a judgment which provides only for other relief (whether or not that other relief is secured by the collateral), such as one or more forms of nonmonetary relief, and monetary relief ancillary to any of the foregoing, such as attorneys' fees and costs incurred in seeking the relief.

(g) If a secured party fails to comply with any of the requirements of this chapter in proceeding as to both real and personal property under subparagraph (ii) of paragraph (a):

(i) A purchaser for value of any interest in the real property at judicial or nonjudicial foreclosure proceedings conducted pursuant to subparagraph (ii) of paragraph (a) takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless:

(A) The purchaser is the secured party and the failure to comply with this chapter occurred other than in good faith; or

(B) The purchaser is other than the secured party and at the time of sale of the real property at that foreclosure the purchaser had actual knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

Even if the purchaser at the foreclosure sale does not take his or her interest free of claims, interests, or title defects based upon that noncompliance with this chapter, a subsequent purchaser for value who acquires an interest in that real property from the purchaser at that foreclosure takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless at the time of acquiring the interest the subsequent purchaser has actual knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

(ii) Rights in personal property or fixtures sold at judicial or nonjudicial foreclosure proceedings pursuant to subparagraph (ii) of paragraph (a) shall be governed by subdivision (4) of Section 9504.

(5) When a secured party has reduced his or her claim to judgment the lien of any levy which may be made upon his or her collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in the collateral. A judicial sale, pursuant to that execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

(6) This section shall be repealed on January 1, 1996.

SEC. 2.5. Section 9501 is added to the Commercial Code, to read:

9501. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter and except as limited by subdivision (3) those provided in the security agreement. The secured party may reduce his or her claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9207. The rights and remedies referred to in this subdivision are cumulative.

(2) After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement and those provided in Section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subdivisions referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subdivision (3) of Section 9504 and Section 9505) and with respect to redemption of

collateral (Section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) Subdivision (2) of Section 9502 and subdivision (2) of Section 9504 insofar as they require accounting for surplus proceeds of collateral;

(b) Subdivision (3) of Section 9504 and subdivision (1) of Section 9505 which deal with disposition of collateral;

(c) Subdivision (2) of Section 9505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9506 which deals with redemption of collateral; and

(e) Subdivision (1) of Section 9507 which deals with the secured party's liability for failure to comply with this chapter.

(4) If an obligation secured by personal property or fixtures (Section 9313(1)(a)) is also secured by real property:

(a) The secured party may do any of the following:

(i) Proceed, in any sequence, (1) in accordance with the secured party's rights and remedies in respect of real property as to the real property security, and (2) in accordance with this chapter as to the personal property or fixtures.

(ii) Proceed in any sequence, as to both some or all of the real property and some or all of the personal property or fixtures in accordance with the secured party's rights and remedies in respect of the real property, by including the portion of the personal property or fixtures selected by the secured party in the judicial or nonjudicial foreclosure of the real property in accordance with the procedures applicable to real property. In proceeding under this subparagraph, a power of sale under the deed of trust or mortgage shall be exercisable with respect to both the real property and the personal property or fixtures being sold, and the sale may be conducted by the mortgagee under the mortgage or by the trustee under the deed of trust. The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property has been actually disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.

(iii) Proceed, in any sequence, as to part of the personal property or fixtures as provided in subparagraph (i), and as to other of the personal property or fixtures as provided in subparagraph (ii).

(b) Except as otherwise provided in paragraph (c), provisions and limitations of any law respecting real property and obligations secured by real property, including, but not limited to, Section 726 of the Code of Civil Procedure, provisions regarding acceleration or reinstatement of obligations secured by real property, prohibitions against deficiency judgments, and limitations on the right to proceed

as to collateral, do not in any way apply to either (1) any personal property or fixtures as to which the secured party has proceeded or is proceeding in accordance with the secured party's rights and remedies as permitted under this chapter, or (2) the obligation secured by the personal property or fixtures.

(c) (i) Paragraph (b) does not limit the application of Section 580b of the Code of Civil Procedure.

(ii) If, in proceeding solely with respect to personal property or fixtures, the secured party commences a judicial action against the debtor (subdivision (1) or (5)), that judicial action shall constitute an action within the meaning of Section 726 of the Code of Civil Procedure if and only if a monetary judgment on the debt is sought against the debtor, and that action shall result in the subsequent unenforceability of the encumbrance on any real property not included in that action only if and when a monetary judgment on the debt is obtained against the debtor.

(iii) Nothing in paragraph (b) shall be construed to excuse compliance with Section 2924c of the Civil Code as a prerequisite to the nonjudicial sale of real property, but that section has no application to the right of a secured party to proceed as to personal property or fixtures.

(iv) Paragraph (b) does not deprive the debtor of the protection of Section 580d of the Code of Civil Procedure against a deficiency judgment following a sale of the real property collateral pursuant to a power of sale in a deed of trust or mortgage.

(v) Paragraph (b) does not apply to a loan or credit sale made to any individual primarily for personal, family, or household purposes.

(d) If the secured party realizes proceeds from the disposition of collateral that is personal property or fixtures, the following provisions shall apply:

(i) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any nonmonetary default.

(ii) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any monetary default (although the application of the proceeds shall, to the extent of those proceeds, satisfy the secured obligation) so as to affect in any way the secured party's rights and remedies under this chapter with respect to any remaining personal property or fixtures collateral.

(e) An action by the secured party utilizing any available judicial procedure, as provided in subdivision (1), shall in no way be affected by omission of a prayer for a monetary judgment on the debt. A judicial action which neither prays for nor results in a monetary judgment on the debt shall not preclude a subsequent action seeking a monetary judgment on the debt.

(f) As used in this subdivision, "monetary judgment on the debt" means a judgment for the recovery from the debtor of all or part of the principal amount of the secured obligation, including, for

purposes of this subdivision, contractual interest thereon. "Monetary judgment on the debt" does not include a judgment which provides only for other relief (whether or not that other relief is secured by the collateral), such as one or more forms of nonmonetary relief, and monetary relief ancillary to any of the foregoing, such as attorneys' fees and costs incurred in seeking the relief.

(g) If a secured party fails to comply with any of the requirements of this chapter in proceeding as to both real and personal property under subparagraph (ii) of paragraph (a):

(i) A purchaser for value of any interest in the real property at judicial or nonjudicial foreclosure proceedings conducted pursuant to subparagraph (ii) of paragraph (a) takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless:

(A) The purchaser is the secured party and the failure to comply with this chapter occurred other than in good faith; or

(B) The purchaser is other than the secured party and at the time of sale of the real property at that foreclosure the purchaser had actual knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

Even if the purchaser at the foreclosure sale does not take his or her interest free of claims, interests, or title defects based upon that noncompliance with this chapter, a subsequent purchaser for value who acquires an interest in that real property from the purchaser at that foreclosure takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless at the time of acquiring the interest the subsequent purchaser has actual knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

(ii) Rights in personal property or fixtures sold at judicial or nonjudicial foreclosure proceedings pursuant to subparagraph (ii) of paragraph (a) shall be governed by subdivision (4) of Section 9504.

(5) When a secured party has reduced his or her claim to judgment the lien of any levy which may be made upon his or her collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in the collateral. A judicial sale, pursuant to that execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

SEC. 3. Section 9502 of the Commercial Code is amended to read:

9502. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him or her whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he or she is entitled under Section 9306.

(2) (a) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his or her reasonable expenses of realization from the collections.

(b) If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus.

(c) If the security agreement secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed, but only (i) if the secured party in collection pursuant to this section has proceeded in a commercially reasonable manner, or (ii) as provided in paragraph (d).

(d) If the secured party in collecting pursuant to this section has provided proper notice pursuant to subdivision (3) of Section 9504, but has not proceeded in a commercially reasonable manner, the debtor is liable, subject to paragraph (e), for any deficiency only if the balance of the indebtedness immediately before the collection exceeds the amount which the secured party establishes would have been realized had the secured party in collecting pursuant to this section proceeded in a commercially reasonable manner, and the liability is limited to the excess.

(e) Notwithstanding paragraph (d), if the secured party in collecting pursuant to this section has not proceeded in a commercially reasonable manner, and if the transaction was entered into by the debtor primarily for personal, family, or household purposes or if the amount of the indebtedness immediately before the collection was fifty thousand dollars ($50,000) or less, then the debtor is not liable for any deficiency.

(f) Upon entry of a final judgment that the debtor is not liable for a deficiency by reason of either paragraph (d) or paragraph (e), the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor that secured the indebtedness for which the debtor is no longer liable.

(g) To the extent, subsequent to a collection which does not satisfy the conditions set forth in clause (i) of paragraph (c), or subsequent to a disposition which does not satisfy any one or more of the conditions set forth in clause (i) of paragraph (b) of subdivision (2) of Section 9504, the secured party collects pursuant to this section on other collateral securing the same indebtedness, the debtor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (d) or paragraph (e), or by reason of paragraph (c) or paragraph (d) of subdivision (2) of Section 9504, recover the proceeds realized from those subsequent collections, as well as any damages to which the debtor may be entitled if the subsequent collection is itself noncomplying or otherwise wrongful. Except for secured transactions entered by the debtor primarily for personal, family, or household purposes, neither the subsequent collections nor the exercise of any other remedy by

the secured party subsequent to a noncomplying collection or disposition shall be deemed tortious or otherwise wrongful based, in whole or in part, on the fact that is occurred subsequent to a noncomplying collection or disposition.

(h) If the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. The provisions of subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds apply only if the security agreement provides that the debtor is entitled to any surplus.

(i) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law. However, except in the case of any secured party which has willfully failed to proceed in a commercially reasonable manner in collection pursuant to this section, or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the amount of any deficiency that would have resulted had the secured party in collecting pursuant to this section proceeded in conformity with the condition set forth in clause (i) of paragraph (c) regardless whether or not the debtor is liable for the deficiency under paragraph (c) or (d).

(3) This section shall be repealed on January 1, 1996.

SEC. 3.5. Section 9502 is added to the Commercial Code, to read:

9502. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him or her whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he or she is entitled under Section 9306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his or her reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

SEC. 4. Section 9504 of the Commercial Code is amended to read:

9504. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The

proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the secured party need not comply with his or her demand.

(2) (a) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure.

(b) If the security interest secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed or otherwise provided in the Retail Installment Sales Act, and in particular Section 1812.5 of the Civil Code or any other statute, but only (i) if the debtor was given notice, if and as required by subdivision (3), of the disposition of the collateral in accordance with subdivision (3), and the disposition of the collateral by the secured party pursuant to this section was conducted in good faith and in a commercially reasonable manner, or (ii) except for secured transactions entered by a debtor primarily for personal, family, or household purposes, as provided in paragraph (c).

(c) If the secured party has provided notice to the debtor pursuant to subdivision (3), if so required, but has not proceeded in a commercially reasonable manner in the disposition of the collateral, the debtor is liable, subject to paragraphs (b) and (d), for any deficiency only if the balance of the indebtedness immediately before the disposition exceeds the amount which the secured party establishes would have been realized had the disposition of the collateral by the secured party pursuant to this section been conducted in conformity with the conditions set forth in clause (i) of paragraph (b), and the liability is limited to the excess. This paragraph does not apply to secured transactions entered by a debtor primarily for personal, family, or household purposes.

(d) Notwithstanding paragraph (c), if any one or more of the conditions set forth in clause (i) of paragraph (b) are not proved by the secured party to be satisfied with respect to the disposition, then the debtor is not liable for any deficiency if either:

(i) All of the collateral immediately before the disposition was

consumer goods and the amount of the indebtedness immediately before the disposition was one hundred thousand dollars ($100,000) or less.

(ii) The amount of the indebtedness immediately before the disposition was fifty thousand dollars ($50,000) or less.

(e) Upon entry of a final judgment that the debtor is not liable for a deficiency by reason of either paragraph (c) or paragraph (d), the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor which secured the indebtedness for which the debtor is no longer liable.

(f) To the extent, subsequent to a disposition that does not satisfy any one or more of the conditions set forth in clause (i) of paragraph (b), or subsequent to a collection which does not satisfy the condition set forth in clause (i) of paragraph (c) of subdivision (2) of Section 9502, the secured party disposes pursuant to this section of other collateral securing the same indebtedness, the debtor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (c) or paragraph (d), or by reason of paragraph (d) or paragraph (e) of subdivision (2) of Section 9502, recover the proceeds realized from the subsequent dispositions, as well as any damages to which the debtor may be entitled if the subsequent disposition is itself noncomplying or otherwise wrongful. Except for secured transactions entered by a debtor primarily for personal, family, or household purposes, neither the subsequent dispositions nor the exercise of any other remedy by the secured party subsequent to a noncomplying disposition or collection shall be deemed tortious or otherwise wrongful based, in whole or in part, on the fact that it occurred subsequent to a noncomplying disposition or collection.

(g) If the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. The provisions of subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds and the liability of the secured party apply only if the security agreement provides that the debtor is entitled to any surplus.

(h) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law; provided, however, that, except in the case of any secured party which has willfully failed to conduct the disposition of collateral in good faith and in a commercially reasonable manner or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the amount of any deficiency which would have resulted had the disposition of the collateral by the secured party been conducted in conformity with the conditions set forth in clause (i)

of paragraph (b) regardless whether or not the debtor is liable for the deficiency under paragraph (b) or (c).

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he or she has not signed after default a statement renouncing or modifying his or her right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his or her address (before that secured party sends his or her notification to the debtor or before debtor's renunciation of his or her rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepaid addressed to the debtor at his or her address as set forth in the financing statement or as set forth in the security agreement or at such other address as may have been furnished to the secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his or her last known address, and to any other secured party at the address set forth in his or her request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held or in case no newspaper of general circulation is published in the county in which the sale is to be held, in a newspaper of general circulation published in the county in this state that (1) is contiguous to the county in which the sale is to be held and (2) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his or her residence or chief place of business, or in the county in which the secured party has his or her residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject

of widely or regularly distributed standard price quotations he or she may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and which is held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings.

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his or she rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

(6) This section shall be repealed on January 1, 1996.

SEC. 4.5. Section 9504 is added to the Commercial Code, to read:

9504. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the secured party need not comply with his or her demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure, and, unless

otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides and the provisions of Section 701.040 of the Code of Civil Procedure relating to payment of proceeds and the liability of the secured party apply only if the security agreement provides that the debtor is entitled to any surplus.

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he or she has not signed after default a statement renouncing or modifying his or her right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his or her address (before that secured party sends his or her notification to the debtor or before debtor's renunciation of his or her rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepaid addressed to the debtor at his or her address as set forth in the financing statement or as set forth in the security agreement or at such other address as may have been furnished to the secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his or her last known address, and to any other secured party at the address set forth in his or her request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held or in case no newspaper of general circulation is published in the county in which the sale is to be held, in a newspaper of general circulation published in the county in this state that (1) is contiguous to the county in which the sale is to be held and (2) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his or her residence or chief place of business, or in the county in which the secured party has his or her residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral

is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he or she may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and which is held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings.

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his or her rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

SEC. 5. Sections 1.5, 2.5, 3.5, and 4.5 of this act shall become operative on January 1, 1996.

SEC. 6. The California Commission on Uniform State Laws is directed to study and report the impact on creditors' remedies and debtors' rights affected by this act, and to make appropriate recommendations. The commission shall also specifically review whether the obligation of good faith imposed pursuant to Sections 1203 and 9504 of the Commercial Code should be reiterated to apply to situations arising under paragraph (d) of subdivision (1) of Section 9502 or paragraph (c) of subdivision (1) of Section 9504 of the Commercial Code as amended by this act, and shall make appropriate recommendations.

CHAPTER 1126

An act to add Section 463 to the Penal Code, relating to crimes.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 463 is added to the Penal Code, to read:

463. (a) Every person who violates Section 459, punishable as a second degree burglary pursuant to subdivision 2 of Section 461, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake or a flood shall be guilty of the crime of looting punishable by imprisonment in a county jail for one year or in the state prison. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, 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.

(b) Every person who commits the crime of grand theft, as defined in Section 487, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake or a flood shall be guilty of the crime of looting punishable by imprisonment in a county jail for one year or in the state prison. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, 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.

(c) Every person who commits the crime of petty theft, as defined in Section 488, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake or a flood shall be guilty of a misdemeanor punishable by imprisonment in a county jail for six months. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 90 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory minimum jail sentence, 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.

(d) (1) For purposes of this section, "state of emergency" means

conditions which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(2) For purposes of this section, "local emergency" means conditions which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(3) For purposes of this section, a "state of emergency" shall exist from the time of the proclamation of the condition of the emergency until three days thereafter. For purposes of this section only, a "local emergency" shall exist from the time of the proclamation of the condition of the emergency by the local governing body pursuant to Section 8630 of the Government Code until three days thereafter.

(4) Consensual entry into a commercial structure with the intent to commit a violation of Section 470, 476, 476a, 484f, or 484g of the Penal Code, shall not be charged as a violation under this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution bec ·se 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 1127

An act to amend and repeal Section 5606.6 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 5606.6 of the Welfare and Institutions Code is amended to read:

5606.6. (a) (1) The Board of Supervisors of Ventura County may establish an interagency council to formulate case management plans for that population limited to users of Short-Doyle services whose problem behavior has resulted in the involvement of two or more of the member agencies represented on the council. The council shall be composed of the Mental Health Services Program Supervisor for Continuing Care, the Mental Health Services

Regional Manager, the Assistant Public Administrator-Public Guardian, the Public Social Services Adult Services Program Manager, a Sheriff's Department Commander, the Mental Health Services Patient Advocate, and the Corrections Services Agency Division Manager for Field Services.

(2) If the Board of Supervisors of Ventura County establishes a council pursuant to this section, the board shall, by January 1, 1987, present a report to the Legislature, including, but not limited to, a statement of goals of the interagency council, completed activities of the council, proposed activities of the council, examples of case management plans developed by the council, and the reasons given by mental health clients, if any, who refused to give consent for disclosure of confidential information to the interagency council.

(b) (1) The Board of Supervisors of San Mateo County may establish an interagency council to formulate case management plans for that population limited to users of Short-Doyle services whose problem behavior has resulted in the involvement of two or more of the member agencies represented on the council.

(2) The council established in San Mateo County shall be composed of representatives from each local law enforcement agency within the county and the directors of the following agencies or their designees:

(A) County Department of Health Services, including Mental Health Services, the Public Health Division, and the Alcohol and Drug Program, within the department.

(B) Public Guardian, Long-term Care Division.

(C) Probation Department.

(D) County Sheriff.

(E) County Counsel.

(F) County Mental Health Patient's Rights Advocate.

(c) (1) Information exchanged between member agencies regarding a client shall be limited to the minimum information necessary to formulate that client's case plan, and shall not include the client's written mental health case record.

(2) Information regarding a client may be exchanged between member agencies only after the county mental health director, or his or her designee, has made reasonable efforts to obtain written authorization from the client. These efforts shall be documented in the client's record, regardless of whether authorization has been obtained or not.

(3) No part of this section shall be construed to restrict the guarantees of confidentiality provided under federal law regarding the release of alcohol and drug information.

(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. 2. 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 due to the unique circumstances concerning the County of San Mateo and its mental health programs.

CHAPTER 1128

An act to add Section 4526.5 to the Government Code, and to add Section 6106 to the Public Contract Code, relating to state contracts.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 4526.5 is added to the Government Code, to read:

4526.5. A state agency head entering into a contract pursuant to this chapter shall, in addition to any other applicable statute or regulation, also follow Section 6106 of the Public Contract Code.

SEC. 2. Section 6106 is added to the Public Contract Code, to read:

6106. (a) Any state agency or department, which is subject to this code, shall follow this section in negotiating fees and executing a contract for professional consulting services of a private architectural, engineering, land surveying, environmental, or construction project management firm.

(b) After providing notification to the successful firm of its selection, the state shall provide written instructions for the negotiations which are to follow. These instructions shall provide the private consulting firm with necessary information which shall allow the negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin negotiations.

(c) Upon the completion of negotiations, the state and the private firm shall proceed to execute a contract so that the contract may be completed by the state within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The state and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion.

(d) In the event that an impasse is reached in negotiations, the state agency or department may terminate negotiations and enter into negotiations with the next most qualified firm as prescribed in Section 4528 of the Government Code.

CHAPTER 1129

An act to amend Sections 12535, 12786, 12797, 55861.7, and 56571.7 of, to add Sections 12798.4 and 12798.6 to, to repeal Sections 12597, 12598, 12786.5, 12787, 12787.5, 12788, 12788.5, 12788.6, 12789, 12789.5, 12790.5, 12791, 12791.5, 12792, 12792.5, 12793, 12793.5, 12795, and 12796 of, and to repeal and add Sections 12794, 12794.5, and 12798 of, the Food and Agricultural Code, relating to pest control.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 12535 of the Food and Agricultural Code is amended 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 to consider pesticides of greatest health concern and contribution to dietary exposure, and for various subpopulations which may be uniquely sensitive to pesticide residues, with special emphasis on infants and 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. 2. Section 12597 of the Food and Agricultural Code is repealed.

SEC. 3. Section 12598 of the Food and Agricultural Code is repealed.

SEC. 4. Section 12786 of the Food and Agricultural Code is amended to read:

12786. The Legislature hereby finds and declares all of the following:

(a) The continued viability of the agricultural economy is of paramount importance to the people of California.

(b) The development of alternatives to existing pesticides available for the control of pests is prudent, and the development of alternatives to pesticides is important for the protection of the public health and safety.

(c) The ability of the state to control, detect, exclude, and

eradicate pest infestations is necessary to continue the preeminent position of this state as the leading farm state and is essential for the continuing supply of foodstuffs.

SEC. 5. Section 12786.5 of the Food and Agricultural Code is repealed.

SEC. 6. Section 12787 of the Food and Agricultural Code is repealed.

SEC. 7. Section 12787.5 of the Food and Agricultural Code is repealed.

SEC. 8. Section 12788 of the Food and Agricultural Code is repealed.

SEC. 9. Section 12788.5 of the Food and Agricultural Code is repealed.

SEC. 10. Section 12788.6 of the Food and Agricultural Code is repealed.

SEC. 11. Section 12789 of the Food and Agricultural Code is repealed.

SEC. 12. Section 12789.5 of the Food and Agricultural Code is repealed.

SEC. 13. Section 12790.5 of the Food and Agricultural Code is repealed.

SEC. 14. Section 12791 of the Food and Agricultural Code is repealed.

SEC. 15. Section 12791.5 of the Food and Agricultural Code is repealed.

SEC. 16. Section 12792 of the Food and Agricultural Code is repealed.

SEC. 17. Section 12792.5 of the Food and Agricultural Code is repealed.

SEC. 18. Section 12793 of the Food and Agricultural Code is repealed.

SEC. 19. Section 12793.5 of the Food and Agricultural Code is repealed.

SEC. 20. Section 12794 of the Food and Agricultural Code is repealed.

SEC. 21. Section 12794 is added to the Food and Agricultural Code, to read:

12794. Members of the research and screening committees shall serve without compensation, but shall be reimbursed for all necessary expenses incurred in the performance of their duties and approved by the director.

SEC. 22. Section 12794.5 of the Food and Agricultural Code is repealed.

SEC. 23. Section 12794.5 is added to the Food and Agricultural Code, to read:

12794.5. The department shall prepare an annual report of the research projects proposed, approved projects awarded, the status of ongoing research projects, the findings achieved from completed research projects, and the progress toward developing and

implementing pest management alternatives in the state. The report shall be submitted annually to the Legislature, on or before February 1.

SEC. 24. Section 12795 of the Food and Agricultural Code is repealed.

SEC. 25. Section 12796 of the Food and Agricultural Code is repealed.

SEC. 26. Section 12797 of the Food and Agricultural Code is amended 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 analytical methods 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. 27. Section 12798 of the Food and Agricultural Code is repealed.

SEC. 28. Section 12798 is added to the Food and Agricultural Code, to read:

12798. (a) The department shall establish a competitive grants program to make funds available to qualified public and private entities to conduct pest management research projects. All of the research related to pest management funded by the department shall be administered pursuant to this program.

(b) Research conducted pursuant to this section shall have the further development of alternative pest management practices and methods and the further development of pest exclusion detection and eradication methods as priorities. 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 establish a Pest Management Research Committee which shall award all funds under the competitive grants program.

(2) The primary objective of the committee is the further development of pest prevention activities and alternative pest management practices, techniques, and methods which exclude serious pests, as determined by the committee, which detect and quickly eliminate small infestations of foreign pests, and which reduce pesticide use, minimize or eliminate pesticide residues, or result in the use of safer pesticides. In achieving that objective, the committee shall encourage the development and use of biological controls, integrated pest management, biotechnology, cultural, pest prevention, and other alternative pest management methods which are environmentally sound and economically viable.

(3) The committee shall consist of 10 persons, who shall serve at the pleasure of the director. The committee shall consist of the following members:

(A) The Director of Food and Agriculture or his or her designee, who shall serve as chairperson.

(B) The President of the University of California or his or her designee.

(C) The Chancellor of the California State University or his or her designee.

(D) Two members who represent the agricultural community, one of whom is an experienced organic farmer and one of whom is knowledgeable and experienced in alternative pest management techniques.

(E) Two members who represent pest management researchers, one of whom represents California's public and private colleges and universities and one of whom represents California's independent research community, both of whom are knowledgeable in pest prevention, control, eradication, and pest management.

(F) One member who represents public interest organizations, qualified in environmental or public health, or both, and knowledgeable in alternative pest management techniques.

(G) One member who represents the State Department of Health Services, with experience in public health or toxicology.

(H) One member who represents county agricultural commissioners, knowledgeable and experienced in alternative pest management techniques and pest prevention, control, and eradication.

(4) The committee shall award funds based upon a competitive application process that meets the eligibility of fulfilling, and has the ability to fulfill, the objectives of this section.

(5) The approval of research proposals shall be made by a majority

vote of the membership of the committee.

(d) For any proposals funded pursuant to this section, the department shall require reasonable accountability, including performance standards, periodic reports, deadlines, and payments conditioned on compliance with performance standards and deadlines.

(e) Funding for second and subsequent years of a multiyear award shall be contingent upon satisfactory completion by the grantee of the prior year grant awards.

(f) 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 educational services to the agricultural community and other interested parties.

SEC. 29. Section 12798.4 is added to the Food and Agricultural Code, to read:

12798.4. The director shall establish a Pest Control Research Screening Committee which shall function as a scientific peer review committee on general pest management research proposals submitted pursuant to Section 12798. The screening committee shall conduct and provide a thorough evaluation of the scientific merit, environmental soundness, and economic viability of each proposal. The committee may circulate research proposals to agricultural commodity groups to obtain information as to the practicality of, and need for, the proposed research. The committee shall meet at the request of the director, and, after reviewing all current proposals, shall make recommendations to the Pest Management Research Committee established pursuant to Section 12798 as to which proposals should be funded. The committee shall consist of the following members:

(a) Five members who represent California's public and private colleges and universities or private research community, each of whom possesses a degree in either entomology, plant pathology, or environmental studies, and who is knowledgeable, technically qualified, and experienced in pest managment research.

(b) One member who represents the department, with experience in pest management.

(c) One member who represents the State Department of Health Services, with experience in public health or toxicology.

SEC. 30. Section 12798.6 is added to the Food and Agricultural Code, to read:

12798.6. The director shall establish a Pest Science and Technology Screening Committee which shall function as a scientific peer review committee on exotic pest research proposals submitted pursuant to Section 12798. The screening committee shall conduct and provide a thorough evaluation of the scientific merit, environmental soundness, and economic viability of each proposal. The committee shall meet at the request of the director and after

reviewing all current proposals shall make recommendations to the Pest Management Research Committee established pursuant to Section 12798 as to which proposals should be funded. The committee shall consist of the following members:

(a) Five members who represent California's public and private colleges and universities or private research community, each of whom possesses a degree in entomology, plant pathology, or environmental studies, and who are knowledgeable, technically qualified, and experienced in exotic pest biology and pest exclusion, detection, and eradication research.

(b) One member who represents the department, with experience in pest prevention.

(c) One member who represents the State Department of Health Services, with experience in public health or toxicology.

SEC. 31. Section 55861.7 of the Food and Agricultural Code is amended 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, 12979, 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. 32. Section 56571.7 of the Food and Agricultural Code is amended 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, 12979, 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.

CHAPTER 1130

An act to amend Sections 54313, 54382, 54402, 54418, and 54422 of, to repeal Section 54388 of, and to repeal and add Section 54403 of, the Government Code, relating to local agencies.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 54313 of the Government Code is amended to read:

54313. "Bonds" means bonds, notes, or other obligations issued by a local agency pursuant to this chapter and payable exclusively from revenues of an enterprise and from any or all of the other funds referred to in Section 54478 upon which the bonds, notes, or other obligations are to be made a charge and from which they are to be payable.

SEC. 2. Section 54382 of the Government Code is amended to read:

54382. The resolution shall:

(a) State the purpose for which the bonds are proposed to be issued.

(b) State the estimated cost of the acquisition, construction, improvement and financing.

(c) State the principal amount of the bonds.

(d) State the maximum rate of interest on the bonds, which shall not exceed the maximum rate specified in Section 53531. That rate may be either fixed or variable, and shall be payable at the times and in the manner specified in the resolution.

(e) Fix the election date.

(f) Fix the manner of holding the election.

(g) Fix the manner of voting on the issuance of the bonds.

(h) State that in all other particulars the election shall be held and the votes canvassed pursuant to law for general municipal elections in such local agencies.

SEC. 3. Section 54388 of the Government Code is repealed.

SEC. 4. Section 54402 of the Government Code is amended to read:

54402. The legislative body may determine and provide in the resolution for:

(a) The issuance of any bonds or a series in the form of serial bonds or sinking fund bonds with serial or term maturities.

(b) The interest of the bonds either fixed or variable, the rate or rates, payable at the times and in the manner specified therein. Under no conditions may the annual fixed or variable interest rate exceed the maximum rate specified in Section 53531 of the Government Code.

(c) The denomination of the bonds.
(d) The form of the bonds, coupon, registered, or book entry.
(e) The registration and conversion privileges of the bonds.
(f) The manner in which the bonds are to be executed.
(g) The medium and place of payment.
(h) The terms of redemption, with or without a premium.

SEC. 5. Section 54403 of the Government Code is repealed.

SEC. 6. Section 54403 is added to the Government Code, to read:

54403. Any premium payable on the bonds shall be in the amount or amounts specified by the legislative body.

SEC. 7. Section 54418 of the Government Code is amended to read:

54418. The legislative body may sell the bonds at a price above or below par in a manner, at public or private sale, as it determines by resolution. If the legislative body decides to sell the bonds at private sale rather than public sale, the local agency shall send a written statement to the California Debt Advisory Commission, no later than two weeks after the sale of the bonds, explaining the reasons for that decision.

SEC. 8. Section 54422 of the Government Code is amended to read:

54422. The payment of interest on and principal of the bonds and any premiums upon the redemption of any thereof are secured by a pledge, charge, and lien upon the revenues of the enterprise and upon such other funds as shall be specified in the resolution authorizing the issuance of the bonds.

CHAPTER 1131

An act to amend Sections 2892.6 and 2895 of the Business and Professions Code, relating to vocational nursing, and making an appropriation therefor.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 2892.6 of the Business and Professions Code is amended to read:

2892.6. The board shall collect a biennial fee, not to exceed two hundred dollars ($200), from any provider of a course in continuing education who requests approval by the board of such course for purposes of continuing education requirements under this chapter. That fee, however, shall in no event exceed that cost required for the board to administer the approval of continuing education courses by continuing education providers.

SEC. 2. Section 2895 of the Business and Professions Code is

amended to read:

2895. The amount of the fees prescribed by this chapter in connection with the issuance of licenses under its provisions is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application shall be fixed by the board, with the approval of the director, at fifty dollars ($50).

(b) The fee for any examination after the first shall be fixed by the board, at seventy-five dollars ($75).

(c) The biennial renewal fee shall be fixed by the board, with the approval of the director, at seventy-five dollars ($75).

(d) Notwithstanding Section 163.5, the delinquency fee for failure to pay the biennial renewal fee within the prescribed time shall be fixed by the board at not more than 50 percent of the regular renewal fee but not more than thirty-seven dollars and fifty cents ($37.50).

(e) The initial license fee is an amount equal to the biennial renewal fee in effect on the date the application for the license is filed.

(f) The fee to be paid for an interim permit shall be fixed by the board, at forty dollars ($40).

(g) The fee for a duplicate license is twenty-five dollars ($25).

(h) The fee for endorsement of a license is seventy-five dollars ($75).

No further fee shall be required for a license or a renewal thereof other than as prescribed by this chapter.

SEC. 3. The Auditor General shall, on or before January 1, 1992, review and report to the Legislature on the operations of the Board of Vocational Nurse and Psychiatric Technician Examiners with respect to office productivity, staffing standards, personnel classification, and revenue requirements to adequately and efficiently discharge its statutorily required functions. Prior to the review, the Auditor General shall consult with representatives of licensees of the board and the consultant who performed the 1989 "Ernst and Young" survey of the board.

CHAPTER 1132

An act to amend Section 11623 of the Insurance Code, relating to insurance.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 11623 of the Insurance Code is amended to read:

11623. (a) To assist the commissioner in carrying out the

purposes of this article, the commissioner shall appoint an advisory committee composed of 15 members. The members representing subscribing insurers shall be elected by the subscribing insurer members. The commissioner shall administer and operate the plan as authorized by law.

Eight members shall represent subscribing insurers and four shall represent the public. Two shall represent producers. The remaining member is the commissioner or his or her designee.

All insurer representatives shall be salaried employees. At least two insurer representatives shall be employed by insurers having their principal headquarters located in California. At least two insurer representatives shall represent companies who have average annual automobile liability premiums in California below one hundred million dollars ($100,000,000) in the prior three years. At least one insurer representative shall represent an insurer with average annual automobile liability premiums in California exceeding one hundred million dollars ($100,000,000) in the prior three years. At least one insurer representative shall represent an insurer with average annual automobile liability premiums in California exceeding seven hundred million dollars ($700,000,000) in the prior three years.

Public members shall be paid two hundred fifty dollars ($250) per meeting and shall be reimbursed all reasonable expenses incurred.

The commissioner shall remove members for nonattendance. Unless satisfactory excuse is made in writing to the commissioner in a timely manner, nonattendance shall mean the failure to appear at more than two regularly scheduled meetings in a 12-month period. Should the member who is removed represent a company or agency, another representative from the company or agency may not be appointed for a period of not less than two years.

The advisory committee with the approval of the commissioner shall appoint a manager to carry out the purposes of this article, employ sufficient personnel to provide services necessary to the operation of the plan, and contract for the provision of statistical and actuarial services.

The cost of the plan, including any personnel and contracting costs, shall be fairly apportioned among the subscribing insurers to whom assignments may be made. The costs associated shall be directly attributable to the management of the plan and directly related to its programs.

(b) On or before April 15 of each year the commissioner shall provide to the Legislature and others who request it a report on the operation of the plan. The report shall include at least the following: for the prior three years, including the year prior to the issuance of the report, the number of assignments made, premiums, losses, loss adjustment expenses, administrative costs, loss ratios and combined ratios in the aggregate and for each subscribing insurer.

(c) Notwithstanding this act, which changes the status of the governing committee to that of an advisory committee, the

committee shall have the necessary standing to bring suit in actions related to the plan in the name of the plan.

CHAPTER 1133

An act to amend Section 86.1 of the Code of Civil Procedure, and to amend Section 1428 of the Health and Safety Code, relating to long-term care health facilities.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 86.1 of the Code of Civil Procedure is amended to read:

86.1. In addition to Section 86, each municipal and justice court has original jurisdiction of civil cases and proceedings in actions brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) if civil penalties are not sought or amount to twenty-five thousand dollars ($25,000) or less. These actions may be transferred to the superior court for consolidation with any other citation enforcement action pending in that court, on the motion of either party.

SEC. 2. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If a licensee desires to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation or the proposed assessment of a civil penalty therefor, the licensee shall within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located. The director's designee shall hold, within 15 business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee. If the licensee fails to notify the director in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made

by a director's designee after a citation review conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision by a director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this subdivision.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation, the director shall immediately notify the Attorney General. Upon notification, the Attorney General shall promptly take all appropriate action to enforce the citation and recover the civil penalty prescribed thereon, and shall take any other action as the Attorney General shall deem appropriate, in the court of competent jurisdiction for the county in which the long-term health care facility is located.

(c) If a licensee desires to contest a class "B" citation or the proposed assessment of a civil penalty therefor, the licensee shall within 15 business days after service of the citation (1) notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located; or (2) notify the director in writing of the licensee's intent to adjudicate the validity of the citation in the municipal court in the county in which the long-term health care facility is located. If requested by the licensee, the director's designee shall hold, within 15 business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal court in the county in which the long-term health care facility is located. The action shall be filed no later than 60 calendar days after a licensee notifies the director that he or she intends to contest a citation, and served no later than 60 days after filing. In the event a citation review conference is held, the action shall be filed no later than 60 calendar days after a licensee notifies the director of his or her intent to contest the decision of the director's designee and served no later than 60 days after filing. If a judicial appeal is prosecuted under this subdivision, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did

occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation or the decision made by the director's designee within the time specified in this subdivision, or fails to file a civil action within the time specified in this subdivision, the citation or the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this subdivision. If a licensee prosecutes a judicial appeal of a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department. Notwithstanding any other provision of law, for those citations issued after January 1, 1988, a licensee prosecuting a judicial appeal shall file and serve an at issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1988, or within six months after the state department files its answer in the appeal, whichever is later. The court shall dismiss the appeal upon motion of the state department if the at issue memorandum is not filed by the facility within the period specified.

(d) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name

specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(e) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(f) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second or subsequent violation occurring within any 12-month period, if a citation was issued and a civil penalty assessed for the previous violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" violation is a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(g) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(h) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing any such proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(i) If the citation is dismissed or reduced, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed or reduced.

(j) (1) Upon a licensee notifying the director of its intent to contest one or more citations or decisions made following a citation review conference where the total penalties do not exceed twenty-five thousand dollars ($25,000), either the state department or the licensee may elect to submit the matter to binding arbitration by filing, within 60 days of the notice a request for arbitration with the American Arbitration Association. If the total penalties exceed twenty-five thousand dollars ($25,000), the parties may mutually agree to binding arbitration. In either event, the parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the petitioner's election, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. The arbitrator's decision shall specify, in writing, the areas of disagreement between the parties, the evidence upon which the decision is based, and the reasons for the decision. The decision of the arbitrator shall be based upon substantive law and shall be binding on all parties, subject to judicial review. This review shall be limited to whether there was substantial evidence to support the decision of the arbitrator.

(2) The arbitrator shall determine which of the parties are financially liable for arbitration costs based upon the position each took at the commencement of the arbitration proceedings compared to the decision of the arbitrator.

(3) The retention of, renewal of, or application for, a license to operate a skilled nursing facility or intermediate care facility shall, for purposes of the administration of this chapter, be deemed a written agreement to arbitrate contested citations within the meaning of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Without extending the time for commencement of these hearings, Section 1283.05 of the Code of Civil Procedure shall be applicable to all proceedings to arbitrate citations issued pursuant to this chapter, except that depositions may be noticed and taken without prior approval of the arbitrator.

(4) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this subdivision. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this provision, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients of the facility.

(5) The state department shall make available, upon request, information regarding the impact of the amendments to this subdivision during the 1989–90 Regular Session on the type and disposition of citations and decisions submitted to binding arbitration. The purpose of the requirement is to examine whether the arbitration process is a proper forum for resolution of class "AA" violations. The information shall include, but not be limited to, all of the following information:

(A) The number of requests for binding arbitration filed, categorized by class of violation and amount of total penalties.

(B) The disposition of requests filed in subparagraph (A).

(C) The number of appeals of citation review conference decisions heard by municipal or superior courts, categorized by class of violation and amount of total penalties.

(D) The disposition of appeals heard in subparagraph (C).

(k) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, which is also contained in those amendments, to request judicial relief from these time limits.

CHAPTER 1134

An act to amend Section 86.1 of the Code of Civil Procedure, and to amend Section 1428 of the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 86.1 of the Code of Civil Procedure is amended to read:

86.1. In addition to Section 86, each municipal and justice court has original jurisdiction of civil cases and proceedings in actions brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) if civil penalties are not sought or amount to twenty-five thousand dollars ($25,000) or less. These actions may be transferred to the superior court for consolidation with any other citation enforcement action pending in that court, on the motion of either party.

SEC. 2. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If a licensee desires to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation or the proposed assessment of a civil

penalty therefor, the licensee shall within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located. The director's designee shall hold, within 15 business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee. If the licensee fails to notify the director in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made by a director's designee after a citation review conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision by a director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this subdivision.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation, the director shall immediately notify the Attorney General. Upon notification, the Attorney General shall promptly take all appropriate action to enforce the citation and recover the civil penalty prescribed thereon, and shall take any other action as the Attorney General shall deem appropriate, in the court of competent jurisdiction for the county in which the long-term health care facility is located.

(c) If a licensee desires to contest a class "B" citation or the proposed assessment of a civil penalty therefor, the licensee shall within 15 business days after service of the citation (1) notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located; or (2) notify the director in writing of the licensee's intent to adjudicate the validity of the citation in the municipal court in the county in which the long-term health care facility is located. If requested by the licensee, the director's designee shall hold, within 15 business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of

a civil penalty, he or she shall state with particularity in writing his or her reasons for that action and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal court in the county in which the long-term health care facility is located. The action shall be filed no later than 60 calendar days after a licensee notifies the director that he or she intends to contest a citation, and served no later than 60 days after filing. In the event a citation review conference is held, the action shall be filed no later than 60 calendar days after a licensee notifies the director of his or her intent to contest the decision of the director's designee and served no later than 60 days after filing. If a judicial appeal is prosecuted under this subdivision, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation or the decision made by the director's designee within the time specified in this subdivision, or fails to file a civil action within the time specified in this subdivision, the citation or the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this subdivision. If a licensee prosecutes a judicial appeal of a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department. Notwithstanding any other provision of law, for those citations issued after January 1, 1988, a licensee prosecuting a judicial appeal shall file and serve an at issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1988, or within six months after the state department files its answer in the appeal, whichever is later. The court shall dismiss the appeal upon motion of the state department if the at issue memorandum is not filed by the facility within the period specified.

(d) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing

and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(e) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(f) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second or subsequent violation occurring within any 12-month period, if a citation was issued and a civil penalty assessed for the previous violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil

penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" violation is a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(g) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(h) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(i) If the citation is dismissed or reduced, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed or reduced.

(j) (1) (A) Upon a licensee notifying the director of its intent to contest one or more citations or decisions made following a citation review conference where the total penalties do not exceed twenty-five thousand dollars ($25,000), either the state department or the licensee may elect to submit the matter to binding arbitration by filing within 60 days of the notice a request for arbitration with the American Arbitration Association. If the total penalties exceed twenty-five thousand dollars ($25,000), the parties may mutually agree to binding arbitration. In either event, the parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion.

(B) The arbitrator's decision shall specify, in writing, the areas of disagreement between the parties, the evidence upon which the decision is based, and the reasons for the decision. The decision of the arbitrator shall be based upon substantive law and shall be binding on all parties, subject to judicial review. This review shall be limited to whether there was substantial evidence to support the decision of the arbitrator.

(C) The arbitrator shall determine which of the parties are financially liable for arbitration costs based upon the position each took at the commencement of the arbitration proceedings compared to the decision of the arbitrator.

(2) The retention of, renewal of, or application for, a license to operate a skilled nursing facility or intermediate care facility shall, for purposes of the administration of this chapter, be deemed a written agreement to arbitrate contested citations within the meaning of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Without extending the time for commencement of these hearings, Section 1283.05 of the Code of Civil Procedure shall be applicable to all proceedings to arbitrate citations issued pursuant to this chapter, except that depositions may be noticed and taken without prior approval of the arbitrator.

(3) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this subdivision. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients of the facility.

The state department shall make available, upon request, information regarding the impact of the amendments to this subdivision during the 1989–90 Regular Session on the type and disposition of citations and decisions submitted to binding arbitration. The purpose of the requirement is to examine whether the arbitration process is a proper forum for resolution of class "AA" violations. The information shall include, but not be limited to, all of the following information:

(A) The number of requests for binding arbitration filed, categorized by class of violation and amount of total penalties.

(B) The disposition of requests filed in subparagraph (A).

(C) The number of appeals of citation review conference decisions heard by municipal or superior courts, categorized by class of violation and amount of total penalties.

(D) The disposition of appeals heard in subparagraph (C).

(k) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, which is also contained in those amendments, to request judicial relief from these time limits.

CHAPTER 1135

An act to amend Sections 56728.6 and 56728.8 of, and to add Article 1.5 (commencing with Section 56210) to Chapter 3 of Part 30 of, the Education Code, relating to special education.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Article 1.5 (commencing with Section 56210) is added to Chapter 3 of Part 30 of the Education Code, to read:

Article 1.5. Special Education Local Plan Areas with Small or Sparse Populations

56210. (a) It is the intent of the Legislature in enacting this article to ensure that individuals with exceptional needs residing in special education local plan areas with small or sparse populations have equitable access to the programs and services they may require. It is further the intent of the Legislature to provide a guaranteed minimum level of authorized instructional personnel service units to special education local plan areas with small or sparse populations and the means through which these special education local plan areas may achieve planned orderly growth and maintenance of services through the local planning process. It is also the intent of the Legislature to relieve special education local plan areas with small or sparse populations from the burdensome dependency upon the annual waiver authority of Section 56728.6, 56728.8, and 56761 so that individuals with exceptional needs residing in those areas may have equitable access to required programs and services.

(b) It is the further intent of the Legislature in enacting this article that special education local plan areas with small or sparse populations be provided with supplemental funding to facilitate their ability to perform the regionalized service functions listed in Section 56780 and provide the direct instructional support of program specialists in accordance with Section 56368.

56211. (a) A special education local plan area submitting a local plan, pursuant to subdivision (c) of Section 56170, which includes all of the school districts located in the county submitting the plan, except those participating in a countywide special education local plan area located in an adjacent county, and which meets the criteria for special education local plan areas with small or sparse populations set forth in Section 56212, is eligible to request that designation in its local plan application and may request exemption for the three-year period covered by its approved plan from compliance with one or more of the standards, ratios, and criteria specified in subdivision (b). In requesting the designation in its local plan application, the

special education local plan area shall include a maintenance of service section, pursuant to Section 56213, in which it may request authorization to operate pursuant to the provisions of this article for the three-year period covered by its approved local plan. Each request shall specify which of the standards, ratios, proportions, and criteria for which any exemption is requested, and why compliance with the standards, ratios, proportions, and criteria would prevent the provision of a free appropriate public education or would create undue hardship.

(b) An eligible special education local plan area submitting a local plan application pursuant to this section may request exemption from the standards, ratios, and criteria set forth in Sections 56728.6, 56728.8 and 56760 pertaining to the authorization, recapture, retention, and operation of instructional personnel service units.

56212. An eligible special education local plan area, which submits a local plan under the provisions of Section 56211, may request designation as a small or sparsely populated special education local plan area in one of the following categories:

(a) A necessary small special education local plan area in which the total enrollment in kindergarten and grades 1 to 12, inclusive, is less than 15,000, and which includes all of the school districts located in the county or counties participating in the local plan.

(b) A sparsely populated special education local plan area in which the total enrollment in kindergarten and grades 1 to 12, inclusive, is less than 25,000, in which the combined pupil density ratio is not more than 20 pupils in those grades per square mile, and which includes all of the school districts located in the county submitting the plan except those that are participants in a countywide special education local plan area located in an adjacent county.

(c) A special education local plan area with a sparsely populated county in which a special education local plan area includes all of the districts in two or more adjacent counties and in which at least one of the counties would have met the criteria set forth in subdivision (a) or (b) of this section if the districts and the county office of education had elected to submit a single county plan.

56213. (a) Each eligible special education local plan area that submits a local plan pursuant to Section 56211 and that elects exemptions from the standards, ratios, proportions, and criteria set forth in Sections 56728.6, 56728.8, and 56760 pertaining to the authorization, recapture, retention, and operation of instructional personnel service units shall, for the duration of its local plan, retain, as minimum annual authorization, the number of authorized instructional personnel service units, and portions thereof, that it reported as operated at the second principal apportionment of the fiscal year immediately preceding the initial year of implementation of the local plan submitted pursuant to this article.

(b) In addition to the contents required to be included in the local plan pursuant to Section 56200, a local plan application submitted

pursuant to this article shall include a maintenance of service section in which the eligible special education local plan area shall project the type and total number of additional instructional personnel service units, and portions thereof, it will require for each year of the duration of the local plan, the locations in which instructional personnel service units will be utilized, their estimated caseloads, and a description of the services to be provided.

56214. Each small or sparsely populated special education local plan area which anticipates that its service needs will require instructional personnel service units, or portions thereof, in excess of those authorized in its approved local plan may submit, prior to March 1 of any year, an amendment to the maintenance of service section of its local plan in which it may request an increase in its total number of authorized instructional personnel service units beginning in the following year. The amendment shall project the type and total number of additional instructional personnel service units, and portions thereof, the small or sparsely populated special education local plan area will require for each remaining year of the duration of the local plan, the locations in which additional instructional personnel service units will be utilized, their estimated caseloads, and a description of the services to be provided.

56214.5. A special education local plan area which ceases meeting the criteria set forth in Sections 56211 and 56212 during any year in which the local plan area is implementing an approved local plan pursuant to this article shall retain the exemptions authorized pursuant to Section 56213 and the then current level of authorized instructional personnel service units for the following year.

56217. Plans and amendments submitted pursuant to this article shall be approved by the State Board of Education prior to the implementation of those plans and amendments.

56218. Instructional personnel service units authorized pursuant to this article shall not increase the statewide total number of instructional personnel service units for the purposes of state apportionments unless an appropriation specifically for an increase in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If an appropriation is made, instructional personnel service units authorized pursuant to this article shall be included in the increased number of units and shall be funded only by the appropriation and no other funds may be apportioned for them.

SEC. 2. Section 56728.6 of the Education Code is amended to read:

56728.6. (a) Notwithstanding subdivision (d) of Section 56760, in the 1985–86 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to children three years of age or older at the second principal apportionment of the prior fiscal year, so long as the pupil count divided by the number of instructional personnel service units is

equal to or greater than the following:

(1) For special classes and centers—9, based on the unduplicated pupil count.

(2) For resource specialist programs—21, based on the unduplicated pupil count.

(3) For designated instruction and services—20, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.

(b) Notwithstanding subdivision (d) of Section 56760, in the 1984–85 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of instructional personnel service units for services to children three years of age or older in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the Superintendent of Public Instruction.

(1) The superintendent shall not authorize additional units for a special education local plan area if, for that special education local plan area, the percentage of pupils in kindergarten and grades 1 through 12 enrolled in special education programs, excluding pupils less than three years of age, would exceed 10 percent.

(2) The superintendent shall not authorize additional units for a special education local plan area if, for that special education local plan area, the ratio of pupils in kindergarten and grades 1 through 12 receiving a specific instructional service, excluding pupils less than three years of age, would exceed the following:

(A) For special classes and centers—0.028.

(B) For resource specialist programs—0.040.

(C) For designated instruction services—0.042.

(3) The superintendent may authorize additional units for a special education local plan area only if the area's pupil-instructional personnel unit ratios, based on the unduplicated pupil count, meet or exceed the ratios specified in paragraphs (1), (2), and (3) of subdivision (a).

(c) The Superintendent of Public Instruction shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional personnel service units, upon criteria which shall include, but not be limited to, all of the following:

(1) Changes in the total number of pupils enrolled in kindergarten and grades 1 through 12.

(2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.

(3) Lower than average and higher than average percentages of pupils in kindergarten and grades 1 through 12 who are currently enrolled in special education programs.

(d) Notwithstanding the provisions of Sections 56211 and 56212, a special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the

provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall consider the following:

(1) Applications from special education local plan areas for waivers for a period not to exceed three years to specifically maintain or increase the level of special education service requirements of individuals with exceptional needs residing in sparsely populated districts or attending isolated schools designated in the application.

(A) Sparsely populated districts are school districts that meet one of the following conditions:

(i) A school district or combination of contiguous school districts in which the total enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive, and in which one or more of the school facilities is an isolated school.

(ii) A school district or combination of contiguous school districts in which the total pupil density ratio is less than 15 pupils, kindergarten and grades 1 to 12, inclusive, per square mile and in which one or more of the school facilities is an isolated school.

(B) Isolated schools are schools with enrollments of less than 600 pupils, kindergarten and grades 1 to 12, inclusive, that meet one or more of the following conditions:

(i) The school is located more than 45 minutes average driving time over commonly used and well-traveled roads from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(ii) The school is separated, by roads that are impassable for extended periods of time due to inclement weather, from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iii) The school is of a size and location that, when its enrollment is combined with the enrollments of the two largest schools within an average driving time of not more than 30 minutes over commonly used and well-traveled roads, including schools in adjacent special education local plan areas, the combined enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iv) The school is the one of normal attendance for a severely handicapped individual, as defined in Section 56030.5, or an individual with a low-incidence disability, as defined in Section 56026.5, who otherwise would be required to be transported more than 75 minutes average one-way driving time over commonly used and well-traveled roads, to the nearest appropriate program.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

(e) For the purpose of this section, a special education local plan area may apply for, and the superintendent may grant, a waiver of

the standards specified in paragraph (2) of subdivision (b) if the waiver is programmatically justified.

(f) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If such an appropriation is made, units authorized by the superintendent pursuant to this subdivision that result in an increase in the statewide total number of instructional personnel service units are subject to the following restrictions:

(1) The units shall be funded only by such appropriation and no other funds may be apportioned for the units.

(2) All units shall be fully funded pursuant to Chapter 7 (commencing with Section 56700) of Part 30.

(g) This section shall become operative July 1, 1985.

(h) The superintendent shall monitor the use of instructional personnel service units retained or authorized by the granting of waivers pursuant to subdivision (d) of this section to assure that such instructional personnel service units are used in a manner wholly consistent with the basis for the waiver request.

SEC. 3. Section 56728.8 of the Education Code is amended to read:

56728.8. (a) Notwithstanding subdivision (d) of Section 56760, for the 1985–86 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to individuals with exceptional needs younger than three years of age at the second principal apportionment of the prior fiscal year, so long as the pupil count of these pupils divided by the number of instructional personnel service units is not less than the following:

(1) For special classes and centers—12, based on the unduplicated pupil count.

(2) For resource specialist programs—24, based on the unduplicated pupil count.

(3) For designated instruction and services—12, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.

(b) Notwithstanding subdivision (d) of Section 56760, in the 1985–86 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of instructional personnel service units for services to individuals with exceptional needs younger than three years of age in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the Superintendent of Public Instruction.

(c) The Superintendent of Public Instruction shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional

personnel service units, upon criteria that shall include, but not be limited to, the following:

(1) Changes in the total number of pupils younger than three years of age enrolled in special education programs.

(2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.

(d) Notwithstanding subdivision (e) of Section 56760, infant programs in special classes and centers funded pursuant to this item shall be supported by two aides, unless otherwise required by the Superintendent of Public Instruction.

(e) Infant services in resource specialist programs funded pursuant to this item shall be supported by one aide.

(f) In determining the number of instructional personnel service units for which a special education local plan area may qualify, a minimum of six infants shall constitute eligibility for the initial unit. However, programs operating pursuant to Section 56425 shall be allowed a minimum of one initial unit for the 1985–86 fiscal year. When units are allocated pursuant to this subdivision, the Superintendent of Public Instruction shall allocate only the least expensive unit appropriate.

(g) Beginning with the 1986–87 fiscal year, those programs operating pursuant to Section 56425 with fewer than six infants shall receive a partial unit, as determined by the Superintendent of Public Instruction.

(h) Notwithstanding the provisions of Sections 56211 and 56212, a special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall give priority to the following factors:

(1) Applications from special education local plan areas for waivers for a period not to exceed three years to specifically maintain or increase the level of special education services necessary to address the special education service requirements of individuals with exceptional needs residing in sparsely populated districts or attending isolated schools designated in the application.

(A) Sparsely populated districts are school districts that meet one of the following conditions:

(i) A school district or combination of contiguous school districts in which the total enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive, and in which one or more of the school facilities is an isolated school.

(ii) A school district or combination of contiguous school districts in which the total pupil density ratio is less than 15 pupils, kindergarten and grades 1 to 12, inclusive, per square mile and in which one or more of the school facilities is an isolated school.

(B) Isolated schools are schools with enrollments of less than 600 pupils, kindergarten and grades 1 to 12, inclusive, that meet one or

more of the following conditions:

(i) The school is located more than 45 minutes average driving time over commonly used and well-traveled roads from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(ii) The school is separated, by roads that are impassable for extended periods of time due to inclement weather, from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iii) The school is of a size and location that, when its enrollment is combined with the enrollments of the two largest schools within an average driving time of not more than 30 minutes over commonly used and well-traveled roads, including schools in adjacent special education local plan areas, the combined enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iv) The school is the one of normal attendance for a severely handicapped individual, as defined in Section 56030.5, or an individual with a low-incidence disability, as defined in Section 56026.5, who otherwise would be required to be transported more than 75 minutes, average one-way driving time over commonly used and well-traveled roads, to the nearest appropriate program.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, or similar facilities within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

(i) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. The allocation for implementation in fiscal year 1990–91 shall not exceed the amount of five hundred thousand dollars ($500,000) provided by subdivision (a) of Provision 6 of Item 6110-161-001 of the Budget Act of 1990. If such an appropriation is made, units authorized by the superintendent pursuant to this section are subject to the following restrictions:

(1) The units shall be funded only by such an appropriation and no other funds may be apportioned for the units.

(2) All units shall be fully funded pursuant to Chapter 7 (commencing with Section 56700) of Part 30.

(j) The superintendent shall monitor the use of instructional personnel service units retained or authorized by the granting of waivers pursuant to subdivision (h) of this section to assure that the instructional personnel service units are used in a manner wholly consistent with the basis for the waiver request.

CHAPTER 1136

An act to amend Sections 70002, 70021, 70029, 70030, 70031, 70032, and 70039 of, and to add Section 70039.5 to, the Education Code, relating to the California Maritime Academy.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 70002 of the Education Code is amended to read:

70002. The nautical school shall be known as the California Maritime Academy.

SEC. 2. Section 70021 of the Education Code is amended to read:

70021. The board shall:

(a) Appoint, and may remove, a president of the school and all necessary instructors and other employees.

(b) Determine the powers, duties, and compensation of the superintendent, instructors, and employees.

(c) Fix the terms upon which students shall be received and instructed in the school, and suspended, discharged, or graduated therefrom.

(d) Make all regulations necessary for the procurement or purchase of supplies and materials for any vessel while she is cruising and for her management and control.

(e) Provide from time to time for cruises in and from San Francisco Harbor.

SEC. 3. Section 70029 of the Education Code is amended to read:

70029. The board may annually expend for the purposes of the school any funds which the Legislature appropriates, and also any funds which are received from the federal government for the purpose of aiding in the maintenance of the school. All such money shall be expended according to law on vouchers, certified by the president or in his absence from the state, by the chairman of the board of governors. The board shall cause to be kept full and detailed accounts of all such expenditures and shall make a complete report thereof, with a list of all the work of the school, annually to the Governor.

SEC. 4. Section 70030 of the Education Code is amended to read:

70030. The board may appoint as president and as instructors of the school the officer or officers as are designated for that purpose by the Secretary of the Navy.

SEC. 5. Section 70031 of the Education Code is amended to read:

70031. (a) The Department of Personnel Administration shall establish and adjust the salaries of the president, members of the teaching staff, officers and employees of the California Maritime Academy in the same manner and following the same procedures as

in the establishment and adjustment of state civil service salaries.

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

SEC. 6. Section 70032 of the Education Code is amended to read:

70032. The president of the school is also the commander of the school. He has, subject to the regulations of the board, the direct control, supervision, and management of the school and of all the property of the school, and has the additional powers and duties as are provided by the regulations of the board.

SEC. 7. Section 70039 of the Education Code is amended to read:

70039. (a) The board of governors may contract with any auxiliary organization, in accordance with subdivision (b), for the provision to the California Maritime Academy of a campus store, canteen, barbershop, or any other program or service that conforms to the purposes of the academy. Any contract for that purpose may provide for, but is not limited to, the leasing of property to the auxiliary organization as deemed by the board of governors to be necessary and appropriate to the purposes of that contract.

(b) In order to qualify for the purposes of this section, and except as provided in subdivision (c), an auxiliary organization shall be a private, nonprofit organization, shall have been approved by the board of governors for the purposes of this section, and shall meet all of the following conditions:

(1) The organization shall be operated in conformity with the policies adopted by the board of governors.

(2) The programs and services provided by the organization pursuant to subdivision (a) shall be operated on a nonprofit, self-supporting basis. Any surplus funds from the operation of any program or service operated by the organization pursuant to this section shall be used in a manner that conforms to the purposes of the academy, in accordance with the policies established by the board of governors.

(3) The organization shall accept no grant, contract, bequest, trust, gift, or other benefit except on the condition that it be used in a manner that conforms to the purposes of the academy, in accordance with the policies established by the board of governors.

(c) The California Maritime Academy Foundation shall be deemed to be an auxiliary organization for purposes of this section.

SEC. 8. Section 70039.5 is added to the Education Code, to read:

70039.5. Except as provided in subdivision (i), in order to qualify for the purposes of Section 70039, an auxiliary organization shall meet all of the following conditions, in addition to the conditions set forth in subdivision (b) of Section 70039:

(a) (1) A certified public accountant shall be selected by the auxiliary organization. Upon being notified of the certified public accountant selected by an auxiliary organization, the superintendent of the school shall forward the applicable auditing and reporting procedures to the selected certified public accountant. In accordance with procedures prescribed by the Department of Finance, the certified public accountant shall annually audit any and all funds of the auxiliary organization. The auxiliary organization shall contract for and receive that audit annually, and shall submit the audit to the board of governors and to the Director of Finance. The auxiliary organization shall annually publish an audited statement of its financial condition, which shall be disseminated as widely as feasible and be available to any person on request. Distribution of the published audited statement of financial condition at a regularly scheduled meeting of the board of governors shall be deemed compliance with this requirement.

(2) The president of the school shall be responsible for ascertaining that all expenditures are in accordance with policies of the board of governors, as well as the propriety of all expenditures and the integrity of the financial reporting made by the auxiliary organization.

(3) The operation of the auxiliary organization shall be conducted in conformity with regulations established by the board of governors, pursuant to subdivision (b) of Section 70039, and the accounting procedures of the auxiliary organization shall be approved by the Director of Finance. The regulations shall include provisions requiring the governing board of the auxiliary organization to provide salaries, working conditions, and benefits for the full-time employees of the auxiliary organization that are comparable to those provided California Maritime Academy employees performing similar services; provided, however, that the regulations may permit retirement benefits or permanent status benefits, or both, to be withheld from temporary and executive employees of the auxiliary organization, and provided further that the regulations may exempt, from the requirement of providing retirement benefits, any auxiliary organization that is funded primarily by mandatory student fees collected by the board of governors. For the purposes of this subdivision, a temporary employee is (a) an employee employed for a research project, workshop, institute, or other special project funded by any grant, contract, or gift; or (b) an employee whose contract of employment is for a fixed term not exceeding three years. For the purposes of this subdivision, an executive employee is any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, business managers, directors, and the like. For purposes of this subdivision, "full-time employee" means a person who is employed in a permanent position for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser. Persons employed on a temporary,

intermittent, irregular time base, or on a limited-term basis are not "full-time employees," unless those employees are engaged on a continuing 10-month or academic-year basis and are employed for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser. For those full-time employees whose duties are not comparable to classes in California Maritime Academy employment, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature. This requirement shall apply to full-time employees of auxiliary organizations even if there are no California Maritime Academy employees performing similar services.

(4) Retirement benefits may be provided by other than the Public Employees' Retirement System. A contract for participation in the Public Employees' Retirement System in accordance with the terms and conditions of the Public Employees' Retirement Law shall be deemed to satisfy fully the requirements of paragraph (3) with respect to retirement.

Notwithstanding anything in paragraph (3) to the contrary, the regulations established by the board of governors may exempt the governing board of any newly created auxiliary organization from the requirement of providing retirement benefits for a period not to exceed three years from the date that the auxiliary organization is established.

(b) The auxiliary organization shall have a board of directors composed, both as to size and categories of membership, in accordance with regulations established by the board of governors.

Each governing board shall, during each fiscal year, hold at least one business meeting each quarter. The board shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney at law nor the certified public accountant need be members of the board.

No auxiliary organization shall accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with policies of the board of governors.

(c) All expenditures and fund appropriations of the auxiliary organization shall be approved by the governing board of the auxiliary organization. Appropriations of funds for use outside of the normal business operations of the auxiliary organization shall be approved in accordance with board of governors policy and regulations by an officer designated by the board of governors.

The board of governors, in consultation with the Department of Finance and the governing boards of the auxiliary organizations that are subject to this section, on or before the beginning of the 1991–92 fiscal year, shall:

(1) Institute a standard systemwide accounting and reporting system for businesslike management of the operation of the auxiliary organizations.

(2) Implement financial standards that will assure the fiscal viability of the auxiliary organizations. Those standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.

(3) Institute procedures to assure that transactions of the auxiliary organizations are within the educational mission of the California Maritime Academy.

(4) Develop policies for the appropriation of funds derived from indirect cost payments not required to implement paragraph (2). Uses of those funds shall be regularly reported to the board of governors.

(d) The board of governors shall develop and implement guidelines to ensure that auxiliary organizations classified as foundations for sponsored programs, workshops, and institutes maintain fiscal viability. These guidelines shall specify how reimbursement received by a foundation for indirect costs in connection with the performance of grants or contracts that exceeds the indirect costs actually incurred by the foundation for those grants or contracts shall be divided between the foundation and the California Maritime Academy, in a manner consistent with the educational mission of the academy.

(e) No member of the governing board of the auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he or she is a member, and any contract or transaction entered into in violation of this section is void.

(f) No contract or other transaction entered into by the governing board of the auxiliary organization is void under the provisions of subdivision (e), nor shall any member of that board be disqualified or deemed guilty of misconduct in office under said provisions, if both of the following circumstances exist:

(1) The fact of that financial interest is disclosed or known to the governing board and noted in the minutes, and the governing board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of that financially interested member or members.

(2) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

(g) Subdivision (f) shall not apply if any one of the following circumstances exists:

(1) The contract or transaction is between an auxiliary organization and a member of the governing board of that auxiliary organization.

(2) The contract or transaction is between an auxiliary organization and a partnership or unincorporated association of which any member of the governing board of that auxiliary organization is a partner or in which he or she is the owner or holder,

directly or indirectly, of a proprietorship interest.

(3) The contract or transaction is between an auxiliary organization and a corporation in which any member of the governing board of that auxiliary organization is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

(4) A member of the governing board of an auxiliary organization is interested in a contract or transaction within the meaning of subdivision (e) and, without first disclosing that interest to the governing board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

(h) It is unlawful for any person to utilize any information, not a matter of public record, that is received by him or her by reason of his or her membership on the governing board of an auxiliary organization, for personal pecuniary gain, regardless of whether he or she is or is not a member of the governing board at the time that gain is realized.

(i) The California Maritime Academy Foundation shall be deemed to be an auxiliary organization for purposes of this section.

CHAPTER 1137

An act to amend and renumber Section 1569.314 of, and to add Section 1569.72 to, the Health and Safety Code, relating to health.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 1569.314 of the Health and Safety Code, as added by Section 3 of Chapter 458 of the Statutes of 1989, is amended and renumbered to read:

1569.681. (a) Each residential care facility for the elderly licensed under this chapter shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients or residents.

(b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) referred to herein include, but are not limited to, those contained in the following:

(1) Newspaper or magazine.
(2) Consumer report.
(3) Announcement of intent to commence business.
(4) Telephone directory yellow pages.
(5) Professional or service directory.
(6) Radio or television commercial.

SEC. 2. Section 1569.72 is added to the Health and Safety Code,

to read:

1569.72. (a) Except as otherwise provided in subdivision (d), no resident shall be admitted or retained in a residential care facility for the elderly if any of the following apply:

(1) The resident requires 24-hour, skilled nursing or intermediate care.

(2) The resident is bedridden, other than for a temporary illness or for recovery from surgery.

(b) For the purposes of this section, "bedridden" means any of the following:

(1) An applicant or resident who requires assistance in turning and repositioning in bed and is unable to leave a building unassisted under emergency conditions.

(2) An applicant or resident who is unable to independently transfer to and from bed and is unable to leave a building unassisted under emergency conditions.

(c) For the purposes of this section, "temporary illness" means any illness which persists for 14 days or less.

(d) A bedridden resident may be retained in a residential care facility for the elderly in excess of 14 days if all of the following requirements are satisfied:

(1) The facility notifies the department in writing regarding the temporary illness or recovery from surgery.

(2) The facility submits to the department, with the notification, a physician and surgeon's written statement to the effect that the resident's illness or recovery is of a temporary nature. The statement shall contain an estimated date upon which the illness or recovery will end or upon which the resident will no longer be confined to a bed.

(3) The department determines that the health and safety of the resident is adequately protected in that facility and that transfer to a higher level of care is not necessary.

(e) Notwithstanding the length of stay of a bedridden resident, every facility admitting or retaining a bedridden resident, as defined in this section, shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(f) Nothing in this section shall be used for purposes of Section 1569.70 to determine the appropriateness of residents being admitted or retained in a residential care facility for the elderly on the basis of health related conditions and the need for these services until the three levels of care set forth in Section 1569.70 are fully implemented. This section shall not prohibit the Community Care Licensing Division of the State Department of Social Services from continuing to implement the regulations of Article 8 (commencing with Section 87700) of Chapter 8 of Division 6 of Title 22 of the California Code of Regulations, as promulgated and approved on

February 13, 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 1138

An act to add and repeal Section 7554 to the Penal Code, relating to peace officers.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 7554 is added to the Penal Code, to read:

7554. (a) The purpose of this section is to establish the extent of peace officers' occupational exposure for HIV infection.

(b) The correctional, custodial, or law enforcement agency to which this title applies or the chief medical officer of a correctional, custodial, or law enforcement agency to which this title applies shall report each reportable incident involving a law enforcement employee under this title together with the disposition of each case to the State Department of Health Services.

The report shall include all of the following: the assignment of the law enforcement employee; the type of incident; the type of injury sustained; the treatment rendered to the injured employee; citations to criminal laws which were allegedly violated; and the identity of the employing agency. Under no circumstances shall the identity of the law enforcement employee or the source person be transmitted by the local law enforcement agency or the chief medical officer of the local agency to the State Department of Health Services.

(c) The State Department of Health Services shall release the data, upon written request, to any law enforcement agency or to any bona fide, nonprofit law enforcement research body primarily concerned with peace officer health issues, provided that the identity of any law enforcement employee, any person who is the subject of a report, or any tested person under this title shall remain anonymous. Any unauthorized release of information leading to the identity of a person whose identity is protected under this section shall constitute a misdemeanor.

(d) The State Department of Health Services shall report to the Legislature on or before July 1 of each year regarding the number, type, and disposition of each report described in subdivision (b), with an evaluation of that data, provided that the reported information does not disclose the identity of any individual law enforcement employee.

(e) For purposes of this section, a "reportable incident" means an incident described in subdivision (a) of Section 7510. A "source person" means a person whose bodily fluids are believed to have contacted the bodily fluids of a law enforcement employee as described in subdivision (a) of Section 7510.

(f) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. 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 1139

An act to amend Section 1502 of, and to add and repeal Section 1530.7 of, the Health and Safety Code, and to amend Sections 16501 and 16508.2 of, and to add Section 16508.3 to, the Welfare and Institutions Code, relating to therapeutic day services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. 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) "Therapeutic day services 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 therapeutic day services 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. 1.5. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

(a) "Community care facility" means any facility, place, or building which is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care

facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day care facility" means any facility which provides nonmedical care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

(3) "Therapeutic day services 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 therapeutic day services 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, in the licensee's family residence, which provides 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. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(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. 2. Section 1530.7 is added to the Health and Safety Code, to read:

1530.7. (a) The department shall, with the advice and assistance of representatives of the counties and therapeutic day services providers, adopt regulations, including program standards, for licensed therapeutic day services facilities, as soon as possible, but no later than July 1, 1992.

(b) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1995, deletes or extends that date.

SEC. 3. Section 16501 of the Welfare and Institutions Code is amended to read:

16501. As used in this chapter, "child welfare services" means public social services which are directed toward the accomplishment

of the following purposes: (a) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (b) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (c) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (d) restoring to their families children who have been removed, by the provision of services to the child and the families; (e) identifying children to be placed in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (f) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. Child welfare services may include, but are not limited to, case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, out-of-home respite care, therapeutic day services, teaching and demonstrating homemakers, parenting training, and transportation.

As used in this chapter, "emergency shelter care" means emergency shelter provided to children who have been removed pursuant to Section 300 from their parent or parents or their guardian or guardians.

The county shall provide child welfare services as needed pursuant to an approved service plan and in accordance with regulations promulgated by the department. Counties may contract for child welfare services, as defined in Sections 16504.1, 16506.1, 16507.1, and 16508.1. Each county shall use available private child welfare resources prior to developing new county-operated resources when the private child welfare resources are of at least equal quality and lesser or equal cost as compared with county-operated resources. Counties shall not contract for needs assessment, client eligibility determination, or any other activity as specified by regulations of the State Department of Social Services.

Nothing in this chapter shall be construed to affect duties which are delegated to probation officers pursuant to Sections 601 and 654.

Any county may utilize volunteer individuals to supplement professional child welfare services in the areas of transportation, respite care, and emergency foster care, provided all volunteers agree to be subject to regulations adopted by the State Department of Social Services.

SEC. 4. Section 16508.2 of the Welfare and Institutions Code is amended to read:

16508.2. It is the intent of the Legislature to establish additional alternatives to foster care placements. Therapeutic day services is an alternative which has been shown in other states to be effective in reunifying families, and in avoiding or shortening the time the children must stay in foster care, and in reunifying placed children

with their families. It has also been found to be significantly less expensive than foster care.

SEC. 5. Section 16508.3 is added to the Welfare and Institutions Code, to read:

16508.3. (a) The State Department of Social Services shall establish an advisory committee consisting of representatives of the County Welfare Directors Association, the California Association of Services for Children, the California Children's Lobby, and others as deemed necessary by the department. The advisory committee shall assist the department in the development of therapeutic day services standards, as required by Section 1530.7 of the Health and Safety Code, in order that these programs can be created as an alternative to placement in foster care and as a means of reunifying children with their families from these placements. The department shall develop, with the assistance of the advisory committee, and submit a report to the Legislature no later than October 1, 1991, which shall include, but not be limited to, all of the following:

(1) The types of children who would be served by therapeutic day services programs.

(2) The types of therapeutic day services which would be authorized for funding.

(3) An explanation of how the Level of Care Assessment Instrument, developed under Section 11467, would be used to determine individual need for therapeutic day services.

(4) An explanation of how therapeutic day services could be integrated into prevention programs established pursuant to Section 16500.5.

(b) The State Director of Social Services shall report to the Legislature immediately upon making the appointments to the advisory committee required by subdivision (a).

(c) This section shall become inoperative one year from the date of the report specified in subdivision (b), and, as of the January 1 following the inoperative date, is repealed, unless a later enacted statute, which becomes effective on or before the January 1 following the inoperative date, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 1502 of the Health and Safety Code proposed by both this bill and AB 3935. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 1502 of the Health and Safety Code, and (3) this bill is enacted after AB 3935, in which case Section 1502 of the Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 3935, at which time Section 1.5 of this bill shall become operative.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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. 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 Consititution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the widest range of protective services to abused and neglected children as early as possible, it is necessary for this act to take effect immediately.

CHAPTER 1140

An act to amend Section 7361 of, to amend and renumber Section 7363 of, and to add Section 7362 to, the Fish and Game Code, relating to striped bass, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. 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 deposited in the Fish and Game Preservation Fund and allocated for the implementation of the restoration and management plan prepared by the department, as described in subdivision (b), and the costs of administering and reporting the status of activities funded with these fees. The department shall notify the appropriate policy committees of the Legislature, and the advisory committee appointed pursuant to Section 7362, not less than 30 days prior to expending any revenues collected pursuant to Section 7360 for any purpose or activity which is not consistent with the restoration and management plan.

(b) The department shall, as it determines necessary, update or supplement the 1989 Striped Bass Restoration and Management Plan for the Sacramento-San Joaquin Estuary. The plan shall contain, but is not limited to, the department's goals and objectives regarding striped bass, identification of problems detrimental to striped bass survival and to human use of striped bass, recommendations of possible solutions to these problems, and estimated costs to

implement these solutions. The department shall consult with federal, state, and local public agencies, private organizations, and individuals in revising the plan.

(c) No contract that is funded by striped bass stamp fees shall be assessed an administrative overhead charge in an amount which exceeds 15 percent of the amount of the contract.

SEC. 2. Section 7362 is added to the Fish and Game Code, to read:

7362. (a) The director shall appoint an advisory committee, consisting of nine members, to provide recommendations to the department regarding the allocation of funds from the fees received pursuant to Section 7360. Members of the committee shall be selected from names of persons submitted by striped bass fishermen and associations representing striped bass fishermen of this state and shall serve at the discretion of the director. The director shall appoint members that possess experience in subjects with specific value to the committee and shall attempt to balance the perspective of different groups of persons represented on the committee. The members of the advisory committee shall be reimbursed for their necessary and proper expenses incurred while performing the duties of the advisory committee from funds received by the department pursuant to Section 7360.

(b) The advisory committee shall annually recommend to the department projects and budgets for the expenditure of the fees received pursuant to Section 7360. All projects proposed by the department for funding with these fees shall be submitted to the advisory committee for review and recommendation. If a difference in priority for funding projects exists between the department and the advisory committee, the department shall notify the advisory committee and shall prepare a report for the appropriate policy committees of the Legislature, to be submitted before legislative hearings are conducted on the department's budget, identifying the differences in priorities and explaining the rationale for the department's budget recommendations.

SEC. 3. Section 7363 of the Fish and Game Code is amended and renumbered to read:

7365. 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. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 amend Section 11320.3 of, and to add Section 11320.33 to, the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 11320.3 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 36 of the Statutes of 1990, 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.

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 services to meet the child care needs of all children in the participant's family up to the age of 12 years.

(5) Provide child care to participants whose program demands flexible hours of care including evening, weekends, and split shifts.

(6) 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) (1) If the county welfare department or a contractor pays for child care servics 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:

(A) The name and address of the care provider.

(B) The address where care is to be provided.

(C) The hours care is to be provided and the charge for this care.

(D) The names, addresses, and telephone numbers of two character references.

(E) A copy of a valid California driver's license or other identification to establish that the care giver is at least 18 years old.

(F) A statement, made under penalty of perjury, 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.

(2) The county may deny payment, or cause the contractor to deny payment, for child care services which are exempt from licensure if any of the following apply:

(A) The provider has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(B) The provider has been convicted of child abuse.

(3) (A) If the county has determined that denial of payment should be instituted pursuant to paragraph (2), and is required to make a report pursuant to Section 11166 of the Penal Code, the county shall immediately refer the case to the county child protective services agency for immediate investigation of the cause for referral.

(B) Denial of payment pursuant to paragraph (2) shall continue until the final disposition of the case under investigation pursuant to subparagraph (A).

(C) If a recipient does not change child care providers when the child care provider selected by the participant is subject to investigation under subparagraph (A), the county may, on a temporary basis, defer the participant's participation in the program under this article, pending the disposition of the case.

(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.

SEC. 2. Section 11320.33 is added to the Welfare and Institutions Code, to read:

11320.33. (a) The county shall provide training for those county employees who are responsible for the provision of, or arrangement of, child care services under this article which are exempt from licensure.

(b) The training required by subdivision (a) shall include training in the following:

(1) Evaluation of child care providers, using the criteria specified in paragraph (2) of subdivision (j) of Section 11320.3.

(2) The role of a mandated reporter under the requirements of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code.

SEC. 3. No reimbursement is required by subparagraph (F) of paragraph (1) of subdivision (j) of Section 11320.3 as amended 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 that provision creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 4. 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 1142

An act to add Section 11756.5 to the Health and Safety Code, relating to alcohol and drug abuse.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. The Legislature finds and declares that although Asians and Pacific Islanders have been coming to California for more than a century, their numbers have grown rapidly in recent years. According to the 1980 census, these groups constituted 4.9 percent of the state's total population. By 1985, that figure had grown to 7.5 percent. The fact that many of these new residents are refugees makes their problems of assimilation unique and even more poignant than those faced by immigrants in general. Because of these cultural stresses, alcohol and drug abuse is increasing in this population, which has traditionally been underserved by social programs. Therefore, the need for culturally specific approaches for the prevention and treatment of alcohol and drug abuse has risen dramatically.

The difficulties associated with alcohol and drug abuse treatment programs in these communities are partly a result of inadequate bilingual, bicultural services for education, prevention, and treatment. In order to augment existing services and to establish new systems so that sufficient and cost-effective programs are available, the unmet prevention and treatment needs of Asians and Pacific Islanders must be addressed as a priority.

Although the creation of culturally sensitive programs is difficult because of language barriers and the diversity between and within ethnic groups, those programs must be established before alcohol and drug abuse in the Asian and Pacific Islander communities becomes a crisis.

SEC. 2. Section 11756.5 is added to the Health and Safety Code, to read:

11756.5. (a) The director shall provide funding for the establishment of three pilot projects aimed at the prevention and nonresidential treatment of alcohol and drug abuse in Asian and Pacific Islander communities. Only one project shall be funded in each county. The projects may serve either adults exclusively, or youth exclusively, or both.

(b) The pilot projects shall operate for a period of three years, commencing on April 1, 1991.

(c) Each of the pilot projects shall be located in counties that have an unmet need for services to the Asian and Pacific Islander population. The pilot projects shall be ethnic-specific, employing bilingual, bicultural counselors, and involving family members and

traditional community resources and indigenous Asian and Pacific Islander approaches.

(d) In determining unmet needs, the department shall consider the population and diversity of Asians and Pacific Islanders in each county.

(1) Only those programs that demonstrate a potential client population of at least 3,000 shall be funded.

(2) Each program to be funded shall demonstrate the capacity to serve at least 5 percent of the potential client population.

(e) In selecting the projects to be funded, the director shall also consider evidence of community support, including, but not limited to, business, educational, charitable, and social service groups. Priority shall be given to programs aimed at respecting the cultural diversity within the target population, especially new and emerging immigrant groups, by offering a spectrum of services.

(f) The department shall evaluate the success of the pilot projects and shall submit an evaluation report to the Legislature no later than December 1, 1994. The evaluation report shall contain, but shall not be limited to, all the following:

(1) The number of clients served by each pilot project.

(2) The number of clients who successfully completed the program offered by each pilot project.

(3) The nature and extent of the alcohol and drug abuse of the clients during the last 30 days of the program offered by each pilot project.

(4) The types of prevention and treatment services provided.

(5) The effectiveness of using bilingual and bicultural approaches to prevention and treatment.

(g) A pilot project shall be deemed successful if both the following occur:

(1) The project served 20 percent more Asian and Pacific Islander clients than were served by any previously existing programs.

(2) The number of referrals to the project from courts and social service and mental health agencies increased 20 percent over prior referrals to any previously existing programs.

(h) To the extent permitted by federal law, the department shall use three hundred thousand dollars ($300,000) of available federal Alcohol, Drug Abuse, and Mental Health Services Block Grant funds to provide funding for the pilot projects established pursuant to this section for the first year of implementation. It is the intent of the Legislature that funding for the pilot projects in subsequent years be appropriated in the annual Budget Act.

CHAPTER 1143

An act relating to public water service.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Notwithstanding Section 1405.1 of the Public Utilities Code, the Public Utilities Commission shall retain jurisdiction over any proceeding commenced prior to January 1, 1992, with the commission by the Sweetwater Springs Water District to acquire by eminent domain the lands, property, and water utility rights owned or operated by Citizen's Utilities Company of California in its service area in Guerneville, Sonoma County, if, following a public hearing, the commission finds all of the following:

(a) The customers of the Citizen's Utilities Company of California water system in Guerneville are receiving inadequate water service.

(b) The State Department of Health Services has determined that uncorrected deficiencies in that system pose an unresolved health hazard to people who use the water from that system.

(c) The voters have approved the formation of the Sweetwater Springs Water District to acquire by eminent domain the lands, property, and water utility rights of Citizen's Utilities Company of California located within the district's present boundaries and that acquisition is necessary and is in the best interests of all the people presently being served by that system.

SEC. 2. The Legislature finds and declares that by reason of the facts and circumstances set forth in Section 1, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and that the enactment of this act as a special law is necessary for the solution of unique problems existing in the Sweetwater Springs Water District.

CHAPTER 1144

An act to amend Section 1785.3 of, and to add Section 1785.5 to, the Civil Code, relating to consumers.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 1785.3 of the Civil Code is amended to read:

1785.3. The following terms as used in this title have the meaning expressed in this section:

(a) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(b) The term "consumer" means a natural individual.

(c) The term "consumer credit report" means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, or (4) other purposes authorized in Section 1785.11.

The term does not include; (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report, or (2) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, or (3) any report by a person conveying a decision whether to make a specific extension of credit directly or indirectly to a consumer in response to a request by a third party, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under Section 1785.20, or (4) any report containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning any such items of information.

(d) The term "consumer credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes.

(e) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer credit reporting agency regardless of how the information is stored.

(f) The term "employment purposes," when used in connection with a consumer credit report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(g) "Item of information" means any of one or more informative entries in a credit report which causes a creditor to deny credit to an applicant or increase the cost of credit to an applicant or deny an

applicant a checking account with a bank or other financial institution.

SEC. 2. Section 1785.5 is added to the Civil Code, to read:

1785.5. Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling, evaluating, or disseminating information on the checking account experiences of consumer customers of banks or other financial institutions is subject to the same laws which govern consumer credit reporting agencies.

CHAPTER 1145

An act to add Article 10.8 (commencing with Section 65590) to Chapter 3 of Division 1 of Title 7 of the Government Code, relating to water conservation.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Article 10.8 (commencing with Section 65590) is added to Chapter 3 of Division 1 of Title 7 of the Government Code, to read:

Article 10.8. Water Conservation in Landscaping

65590. This article may be cited and shall be known as the Water Conservation in Landscaping Act.

65591. The Legislature finds and declares all of the following:

(a) The waters of the state are of limited supply and are subject to ever increasing demands.

(b) The continuation of California's economic prosperity is dependent on adequate supplies of water being available for future uses.

(c) It is the policy of the state to promote the conservation and efficient use of water and to prevent the waste of this valuable resource.

(d) Landscapes are essential to the quality of life in California by providing areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development.

(e) Landscape design, installation, and maintenance can and should be water efficient.

65591.5. (a) It is the intent of the Legislature that the Department of Water Resources prepare and promote the use of a model water efficient landscape ordinance which local agencies may

adopt.

(b) It is the intent of the Legislature that the Department of Water Resources adopt a model water efficient landscape ordinance based on recommendations from a task force representing the landscape, water, and building industries, local agencies, and others.

(c) It is the intent of the Legislature that the task force reach general agreement on those provisions which will be included in the model water efficient landscape ordinance.

(d) It is the intent of the Legislature that the task force consider the most recent information on efficient landscape irrigation technologies and those elements of existing water efficient landscape ordinances which have proven successful in reducing water consumption.

(e) It is the intent of the Legislature that the model water efficient landscape ordinance developed pursuant to this article promote the most efficient use of water in the landscape while respecting the economic, environmental, aesthetic, and lifestyle choices of individuals and property owners.

65592. Unless the context requires otherwise, the definitions used in this section govern the construction of this article:

(a) "Department" means the Department of Water Resources.

(b) "Local agency" means any city, county, or city and county.

(c) "Water efficient landscape ordinance" means an ordinance or resolution adopted by a local agency to address the efficient use of water in landscaping.

65593. Not later than February 1, 1991, the department shall appoint an advisory task force to work with department staff in the drafting of a model water efficient landscape ordinance. The task force shall consist of the following members:

(a) One member selected from a list provided by the League of California Cities.

(b) One member selected from a list provided by the County Supervisors Association of California.

(c) One member selected from a list provided by a recognized professional association in California representing water agencies.

(d) One member selected from a list provided by a recognized association in California representing commercial builders.

(e) One member selected from a list provided by a recognized professional association in California representing residential builders.

(f) One member representing a nonprofit environmental protection organization or a water conservation organization whose principal purpose includes promoting the efficient use of water or water conservation.

(g) One member selected from a list provided by a recognized professional association in California representing the nursery industry.

(h) One member selected from a list provided by a recognized professional association in California representing landscape

contractors.

(i) One member selected from a list provided by a recognized professional association in California representing landscape architects.

(j) One member selected from a list provided by a recognized professional association in California representing the manufacturers or designers of irrigation equipment.

(k) One member representing the Green Industry Council of California.

(*l*) One member selected from a list provided by a recognized association in California representing the growers or producers of turf grass.

(m) One member selected by the Director of Water Resources.

Membership of the task force shall, to the extent practicable, be representative of the state's cultural, racial, and ethnic diversity and gender balance.

All meetings of the task force shall be subject to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

The Legislature declares that some individuals appointed as members of the task force must be chosen as representatives of the industries and professions impacted by local water conservation ordinances, and that their representation of these industries and professions does serve the general public interest as they have unique information, expertise, and experience on the issue of water conservation and landscaping that should be taken into consideration by the department as it considers the development of model water conservation ordinances. Therefore, for purposes of persons who hold this office, the industries and professions which are represented on the task force constitute the public generally within the meaning of Section 87103 of the Government Code in those decisions impacting those specific industries and professions, unless the results of their actions taken as task force members have a material financial effect on those members distinguishable from their effect on other members of their respective industries and professions generally.

The task force shall submit the recommended model local water efficient landscape ordinance to the department on or before May 1, 1991.

The department shall adopt a model local water efficient landscape ordinance based on the recommendations of the task force.

The task force shall cease to exist on the date the department adopts a model local water efficient landscape ordinance or January 1, 1992, whichever occurs first.

65594. (a) Not later than January 1, 1992, after holding a public hearing, the department, based on recommendations of the task force established pursuant to Section 65593, shall adopt a model local water efficient landscape ordinance which each local agency may adopt.

(b) In developing the model ordinance, the task force shall recognize and promote the benefits of consistent local ordinances in areas having similar climatic, geological, or topographical conditions.

(c) The department shall notify and deliver a copy of the model local water efficient landscape ordinance to the Joint Legislative Budget Committee. The Joint Legislative Budget Committee shall have 60 days to review the model ordinance before it is formally adopted by the department.

(d) Not later than January 31, 1992, the department shall distribute the adopted model ordinance to all local agencies and other interested parties.

(e) The department shall promote the benefits of consistent local ordinances in areas having similar climatic, geological, or topographical areas.

65595. If by January 1, 1993, a local agency has not adopted a water efficient landscape ordinance or has not adopted findings based on climatic, geological, or topographical conditions, or water availability, which state that a water efficient landscape ordinance is unnecessary, the model water efficient landscape ordinance adopted by the department pursuant to subdivision (a) of Section 65594 shall take effect on January 1, 1993, and shall be enforced by the local agency and have the same force and effect as if adopted by the local agency.

65596. To the extent feasible, local agencies that adopt a water efficient landscape ordinance after the model water efficient landscape ordinance is adopted by the department, shall consider the provisions of the model.

65597. The proposed model ordinance shall contain, but not be limited to, the following:

(a) Provisions for water conservation through the appropriate use and groupings of plants that are well adapted to particular sites and to particular climatic, geological, or topographical conditions. The model ordinance shall not prohibit or require specific plant species, but it may include conditions for the use of plant species. However, the model shall not include conditions which have the effect of prohibiting or requiring specific plant species.

(b) Provisions for the use of automatic irrigation systems and seasonal irrigation schedules, incorporating water conservation design and utilizing methods appropriate for specific terrains, soil types, wind conditions, temperatures, and other environmental factors, in order to ensure a high degree of water efficiency.

(c) Provisions for grading and drainage to promote healthy plant growth and to prevent excessive erosion and runoff, and the use of mulches in shrub areas, garden beds, and landscaped areas where appropriate.

(d) Provisions for the use of reclaimed water supplied through dual distribution systems, if feasible and cost effective, and subject to appropriate health standards.

(e) Provisions to educate water users on the efficient use of water

and the benefits of doing so.

(f) Provisions addressing regional differences where necessary and feasible, including fire prevention needs.

(g) Provisions to exempt landscaping which is part of a registered historical site, where feasible.

(h) Provisions for the use of economic incentives to promote the efficient use of water, where feasible.

(i) Provisions for landscape maintenance practices which foster long-term landscape water conservation. Landscape maintenance practices may include, but are not limited to, performing routine irrigation system repair and adjustments, scheduling irrigation based on CIMIS (California Irrigation Management Information System), conducting water audits, and prescribing the amount of water applied per landscaped acre.

65598. The proposed model ordinance shall exempt cemeteries from all provisions of the ordinance except those provisions adopted to conform with subdivisions (e), (h), and (i) of Section 65597. In adopting language specific to cemeteries, the task force shall recognize their special landscape management needs.

65599. Not later than January 31, 1993, each local agency shall file with the department a copy of the water efficient landscape ordinance adopted pursuant to Section 65595, or adopted before the effective date of this article, or the findings which state that a water efficient landscape ordinance is unnecessary. Not later than July 1, 1993, the department shall prepare and submit a report to the Legislature summarizing the status of water efficient landscape ordinances adopted by local agencies.

65600. Any actions or proceedings to attach, review, set aside, void, or annul the act, decision, or findings of a local agency on the ground of noncompliance with this article shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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 1146

An act to add Section 68543.8 to the Government Code, relating to judges.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 68543.8 is added to the Government Code, to read:

68543.8. (a) The Legislature finds that there is a shortage of judicial officers available to provide temporary assistance to courts in rural counties, under assignment by the chief justice. When courts are unable to obtain temporary assistance, delay of both civil trials and case settlements occur. The availability of an assigned judge can substantially reduce these delays. The purpose of this section is to make judicial assistance more available.

(b) The Judicial Council shall contract with up to 10 retired judges who shall be available to be assigned up to 110 court days each year by the Chairperson of the Judicial Council to courts in counties which have requested these judges for purposes of reducing delays in civil trials in those courts. If counties request more than 10 retired judges pursuant to this section, the Judicial Council shall give priority in assigning the retired judges to counties with fewer than 10 judges.

A judge under contract pursuant to this section shall serve as assigned during the period of the contract and waives any right to refuse assignment as otherwise provided by law. This section shall not be construed to limit the authority of the Chief Justice to make assignments to expedite judicial business and to equalize the workload of judges.

(c) Notwithstanding Section 68543.5, each judge under contract pursuant to this section shall receive one-half of the daily salary of a superior court judge for each day of service, in addition to any retirement benefits to which the judge may be entitled.

(d) The assigned judge's salary shall be paid by the state and the county to which the judge is assigned shall reimburse the state for the amount of the salary of a judge of the court to which the judge is assigned, together with the additional compensation and expense reimbursement required by this section. A retired judge under contract pursuant to this section shall be allowed expenses for travel, board, and lodging incurred in the discharge of each 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 and board incurred in the discharge of the assignment. The expenses for travel, board, and lodging shall be paid by the state under the rules adopted by the State Board of Control which are applicable to officers of the state provided for in Article VI of the California

Constitution while traveling on official state business, and the state shall be reimbursed therefor by the county to which the judge is assigned. A court may not request an assigned judge pursuant to this section unless there are sufficient funds in the court's budget to pay the required reimbursement. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

CHAPTER 1147

An act to amend Section 29143 of the Public Utilities Code, relating to transit districts.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 29143 of the Public Utilities Code is amended to read:

29143. (a) The district is hereby authorized to issue revenue bonds, payable, in whole or in part, from revenues made available under this article. Those revenues are deemed to be revenues of the enterprise for all purposes of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and the restrictions therein provided against the securing of bonds by the taxing power or the proceeds of taxation do not apply. The district is deemed a "local agency" and the planning, acquiring, constructing, operating or maintaining of the district's rapid transit facilities, or any part thereof, is deemed an "enterprise," within the meaning of the Revenue Bond Law of 1941. The provisions of that law not inconsistent with any of the provisions of this article are made applicable to the district, except that no election shall be required for the issuance of revenue bonds authorized by the board pursuant to this article and secured, in whole or in part, by the revenues made available under this article. Notwithstanding any provision of the Revenue Bond Law of 1941, the resolution or indenture authorizing the issuance of any revenue bonds secured, in whole or in part, by those revenues shall provide that the use of the revenues by the district to redeem bonds shall be continued in effect until the bonds are fully paid or provision has been made for their payment in full.

(b) Notwithstanding Section 54388 of the Government Code or any other law, the revenue bonds authorized by this article may be sold through negotiated sale conducted in accordance with Section 53591 of the Government Code.

(c) The district may borrow money in anticipation of the revenues made available under this article and may, from time to

time, issue negotiable notes for that purpose.

(d) In addition to pledging revenues for the payment of any revenue bonds, the district may pledge for the payment of the bonds all other income or receipts of the district which are not required by law to be used for other purposes.

CHAPTER 1148

An act to amend Sections 14536.5, 14542.1, 14570, and 14571.6 of the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 14536.5 of the Public Resources Code is amended to read:

14536.5. (a) In carrying out the division, the department may solicit and use all expertise available in other state agencies and where an existing state agency performs functions of a similar nature to the department's functions, the department may contract with, or cooperate with, the agency in carrying out this division.

(b) Notwithstanding subdivision (a), the Department of Food and Agriculture may, as requested by the department, collect, compile, and report information regarding the importation of filled or postfilled beverage containers. Border agricultural inspection stations and any other appropriate information gathering focal points may be used and the plant quarantine officers and supervisors of the Department of Food and Agriculture shall collect, compile, and report information requested by the department pursuant to this subdivision. Recovery of costs incurred by the Department of Food and Agriculture shall be accomplished through an interagency agreement with the department.

SEC. 2. Section 14542.1 of the Public Resources Code is amended to read:

14542.1. On or before March 1, 1991, the department shall submit to the Legislature a report concerning the effectiveness of convenience zones and certified recycling centers in encouraging convenient and economical recycling, and the advisability of revising current convenience zone and certified recycling center requirements established under this division to improve consumer convenience and economic efficiencies. The report shall contain all of the following:

(a) A comparison between beverage container redemption rates at certified recycling centers established pursuant to this division, and the incremental increase in recycling rates which occurred as a

result of enactment of this division at recycling centers which were in existence prior to the enactment of this division.

(b) An analysis of consumer recycling trends, including an examination of methods to encourage recycling of beverage containers subject to this division which are currently not recycled.

(c) A comparison of the systems, programs, methods, and services used to provide opportunities to redeem beverage containers to consumers by certified recycling centers established pursuant to this division, and by recycling centers which were in existence prior to the enactment of this division.

(d) Information which compares the economic efficiencies of recycling centers and programs. This information shall include the amounts of redemption values, redemption bonuses, convenience incentive payments, administrative fees and other payments from the California Beverage Container Recycling Fund provided to consumers and to recycling centers and programs, including those recycling centers and programs which were established pursuant to this division and recycling centers which were in existence prior to the enactment of this division.

(e) Recommendations for modifications to this division which would improve consumer convenience and improve the economic efficiencies of recycling centers and programs, if the department determines that those modifications are necessary.

SEC. 3. Section 14570 of the Public Resources Code 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 each public entrance to the dealer's place of business, which specifies one of the following:

(1) The name and address, 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 a.m. to 5 p.m.

(2) One of the following procedures for redeeming beverage containers is available, pursuant to Section 14571.6:

(A) Beverage containers may be redeemed at all open cash registers within this place of business.

(B) Beverage containers may be redeemed at one specific location within the dealer's place of business which is identified on the sign.

(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 a.m. to 5 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. 4. 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 are being met by the 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 signs which meet the size and location requirements specified in subdivision (a) of Section 14570, and which conform to paragraph (2) of that subdivision.

(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. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 1149

An act to add Chapter 10 (commencing with Section 19999.7) to Part 2.6 of Division 5 of Title 2 of the Government Code, relating to the Department of Personnel Administration.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Chapter 10 (commencing with Section 19999.7 is added to Part 2.6 of Division 5 of Title 2 of the Government Code, to read:

CHAPTER 10. ANNUITY CONTRACTS

19999.7. (a) The department may establish and administer the purchase of annuity contracts which meet the requirements of Section 403(b) of the Internal Revenue Code and shall prescribe regulations in connection thereto which, among other things, specify standards to be met by companies or other persons or entities which offer annuity contracts for sale, including standards to ensure that providers are rated by a nationally recognized rating service as being within the three highest rating categories for financial condition and operating performance. The provisions of Section 770.3 of the Insurance Code shall not be applicable to the department.

(b) This section shall apply only to the purchase of annuity contracts on and after the effective date of this section.

CHAPTER 1150

An act to amend Sections 65852.1 and 65852.2 of the Government Code, relating to housing.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 65852.1 of the Government Code is amended to read:

65852.1. Notwithstanding Section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1,200 square feet.

This section shall not be construed to limit the requirements of Section 65852.2, or the power of local governments to permit second units.

SEC. 2. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones consistent with all of the following provisions:

(1) Areas may be designated within the jurisdiction of the local agency where second units may be permitted.

(2) The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(3) Standards may be imposed on second units which include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of a unit.

(4) A local agency may find that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(5) The second units created shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(6) A local agency may establish a process for the issuance of a conditional use permit for second units.

(b) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a conditional use permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901, every local agency shall grant a special use or a conditional use permit for the creation of a second unit if the second unit complies with all of the following:

(1) The unit is not intended for sale and may be rented.

(2) The lot is zoned for single-family or multifamily use.

(3) The lot contains an existing single-family dwelling.

(4) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(5) Any increase in the floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(6) The total area of floor space for a detached second unit shall not exceed 1,200 square feet.

(7) Any construction shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(8) Local building code requirements which apply to detached dwellings, as appropriate.

(9) Approval by the local health officer where a private sewage disposal system is being used, if required.

No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family and multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(e) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.

CHAPTER 1151

An act to add Chapter 23 (commencing with Section 78401) to Division 22 of the Food and Agricultural Code, relating to seafood, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Chapter 23 (commencing with Section 78401) is added to Division 22 of the Food and Agricultural Code, to read:

CHAPTER 23. CALIFORNIA SEAFOOD COUNCIL

Article 1. Short Title and Definitions

78401. This chapter shall be known and may be cited as the "California Seafood Marketing, Research, and Development Act."

78402. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

78403. "Council" means the California Seafood Council.

78404. "Exporter" means any person who is engaged, or who works for a person who is engaged, in the export to a foreign nation or nations of seafood landed in California.

78405. "Fiscal year" means from April 1 of a year to March 31, inclusive, of the next succeeding year.

78406. "Fisherman" means any person licensed to commercially harvest fish pursuant to Sections 7850 to 7852, inclusive, of the Fish and Game Code who lands any species of fish listed in Section 78407.

78407. "Fisheries" means:

(a) All species of fish and shellfish landed in California which are treated as a unit for purposes of research, development, promotion, and marketing, except abalone, anchovy, dungeness crab, herring and herring roe, pink shrimp, salmon, sea urchins, all fish taken by use of trawl nets landed north of San Luis Obispo County, and all tuna products landed for transshipment for canning in other states or nations.

(b) Any economic activity involving the harvesting, receiving, processing, manufacturing, or distributing of fisheries described in subdivision (a) and products therefrom.

78408. "Handler" means any of the following:

(a) A processor engaged in the California fishery.

(b) A receiver engaged in the California fishery.

(c) A wholesaler engaged in the California fishery.

(d) An exporter engaged in the California fishery.

(e) A person is licensed or who works for any person who is licensed pursuant to subdivision (a) of Section 8032 of the Fish and

Game Code and engaged in the California commercial fisheries.

78409. "Marketing association" means any commercial fishermen's organization established on either a local, county, or statewide level, incorporated in this state, to enable fishermen to collectively negotiate and issue orders and agreements with receivers for the purchase of their catches, or to otherwise engage in activities permitted of agricultural cooperatives, and whose members are involved in the California commercial fisheries.

78410. "Person" has the same meaning as that term is defined by Section 38.

78411. "Processor" means any person who is licensed or who works for any person who is licensed pursuant to Section 8034 of the Fish and Game Code and engaged in the California commercial fisheries.

78412. "Receiver" means any person who is licensed or who works for a person who is licensed pursuant to Section 8033 of the Fish and Game Code and engaged in the California commercial fisheries.

78413. "Wholesaler" means any person who is licensed or who works for a person who is licensed pursuant to Section 8035 of the Fish and Game Code and engaged in the California commercial fisheries.

78414. "Ex-vessel price" means the price paid to fishermen for fish or shellfish by receivers at the point of first sale.

Article 2. General Provisions

78425. The Legislature finds and declares that this chapter is enacted in the exercise of the police power of this state for the purposes of protecting and furthering the public health and welfare.

78426. The Legislature further finds and declares that the fisheries of this state are affected with a public interest, in that, among other things:

(a) The harvesting, processing, manufacturing, and distributing of fishery products constitute a paramount industry of this state, which not only provides substantial and required revenues for the state and its political subdivisions and employment and a means of livelihood for many residents, but which also furnishes essential foods that are vital to the public health and welfare.

(b) It is through commercial fishermen and receivers that more than 90 percent of this state's citizens have access to these healthful foods which are resources that belong to all of the residents of the state and country.

(c) The stabilization, maintenance, and expansion of the California commercial fisheries, and of the state, nationwide, and foreign markets for its products are necessary to ensure the consuming public access to, and an adequate supply of foods which are indispensable in, a proper human diet, to protect, for the state and its political subdivisions, a necessary source of tax revenue, to

provide and maintain an adequate standard of living for a segment of the population of this state, to maintain proper wage scales for those engaged in the California commercial fisheries, and to maintain existing employment.

(d) The essentiality of fish, low in fat and calories, to proper human nutrition and to the maintenance of a high level of public health is such as to require that the public be made thoroughly aware thereof, and be protected against misrepresentation and deception, through the dissemination of accurate and scientific information relative to the healthful qualities of fishery and seafood products, their various classifications and the food values and industrial and medicinal uses thereof, the methods, care, and precautions necessary to their proper harvesting, processing, manufacturing, and distributing, and the necessary costs and expenses thereof, and the necessity and desirability on the part of the public of using and consuming fishery products of the highest standards of quality.

78427. The Legislature declares that the purposes of this chapter are as follows:

(a) To enable the seafood industry, with the aid of the state, to develop, maintain, and expand the state, nationwide, and foreign markets for seafood products which are harvested, processed, manufactured, sold, or distributed in this state for human consumption, and the use and consumption of seafood and seafood products in those markets.

(b) In aid, but not in limitation, of the purpose in subdivision (a), to authorize and enable the director to formulate and effectuate, directly or in cooperation with other agencies, organizations, including the West Coast Fisheries Development Foundation, the Coastal Resources Center, the California Salmon Council, and the National Fish and Seafood Promotion Council, and other instrumentalities specified in this chapter, sales stimulation and consumer, or other educational and research programs, designed to increase the use and consumption of seafood and seafood products landed in California for human consumption.

(c) To promote the continued viability of fisheries and thereby promote continued access to California's seafood resources.

(d) To present facts to and negotiate with state, federal, and other agencies on matters which affect the availability and marketing of California seafood.

(e) To provide funds for the administration and enforcement of this chapter by the collection of mandatory fees in the manner prescribed in this chapter.

78428. This chapter shall be liberally construed.

78429. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity does 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.

78430. A violation of this chapter is a misdemeanor.

Article 3. Administration

78450. The director shall administer and enforce this chapter, and may exercise any of the administrative powers which are conferred by Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code upon a head of a department.

In order to effectuate the declared purposes of this chapter, the director may contract to carry out the declared intent and purposes of this chapter.

78451. Upon recommendation by the council, the director may adopt, consistent with this chapter, any regulations relating to the administration and enforcement of this chapter necessary to carry out the purposes and attain the objectives of this chapter. However, the director shall not engage in any seafood education, research, or promotion activity without the approval of a majority of the voting members of the council.

78452. Upon the adoption of any regulations under this chapter, a copy of the regulations shall be posted on a bulletin board which shall be maintained by the director in his or her office. The director shall mail a copy of the notice of the adoption of the regulations to commercial fishermen and every receiver that is directly affected by the regulations whose name and address is on file in the office of the director and to every person who files in the office of the director a written request for that notice. No regulation shall become effective until five days after the date of that posting and mailing.

Article 4. California Seafood Council

78475. There is in the State of California the California Seafood Council. The council shall be composed of 11 voting members and their alternates, and five nonvoting members.

78476. The voting members of the council shall be appointed by the director, after consultation with the Director of Fish and Game, giving due consideration to proper geographic distribution. The 11 voting members shall include:

(a) Four receivers or processors or their representatives, and their alternates.

(b) Five fishermen who are licensed commercial fishermen or their representatives, and their alternates. The fishermen appointed pursuant to this subdivision shall each represent the users of one of the following types of fishing gear:

(1) Gill and trammel nets.

(2) Hook and line.

(3) Trawl nets.

(4) Round-haul nets.

(5) Traps.

(c) One representative of a handler who is an exporter or a wholesaler, and an alternate.

(d) One public member, and an alternate.

78477. (a) If, pursuant to Section 78577, the receivers vote in favor of the council and the fishermen do not, the council shall be implemented with seven members and the number of fishermen representatives appointed pursuant to subdivision (b) of Section 78476 shall be reduced to one, and the alternate.

(b) If, pursuant to Section 78577, the fishermen vote in favor of the council and the receivers do not, the council shall be implemented with eight members and the number of receiver or processor representatives appointed pursuant to subdivision (a) of Section 78476 shall be reduced to one, and the alternate.

78478. (a) The fishermen and their alternates shall be selected from lists of nominees submitted by marketing associations and any organization deemed by the director to represent the majority of organized California commercial fishermen harvesting species of fish and shellfish included under this chapter and from nominations by individual fishermen.

(b) The receivers, processors, wholesalers, or exporters and their alternates shall be selected from lists of nominees submitted by an organization deemed by the director to represent the majority of those organized groups in the state, and from individual receivers, processors, wholesalers, and exporters.

(c) The public member and alternate shall be selected by the director from a list submitted by the receiver, handler, and fishermen members of the council.

78479. The voting members of the council shall each be appointed to a three-year term, except that in the first year of the council, four members shall be appointed to one-year terms; four members shall be appointed to two-year terms; and three shall be appointed to three-year terms.

78480. If, pursuant to Section 78577, either the fishermen or the receivers, but not both, vote in favor of the council, the voting members of the council shall each be appointed to a three-year term, except in the first year of the council when three members shall be appointed to one-year terms, three members shall be appointed to two-year terms, and the remaining members shall be appointed to three-year terms.

78481. The term of office of a member of the council shall begin on April 1 and expire on March 31.

78482. Any vacancy in the membership of the council which occurs during the unexpired term shall be filled by the director for the unexpired term from the eligible nominees. No council member or alternate shall serve more than two consecutive three-year terms. Service as an alternate does not disqualify a person to then serve two additional terms as a member, and a member who was appointed for a one-year or a two-year term may serve two additional three-year terms.

78483. The director may remove any member of the council or alternate for cause, and, upon that removal, there is a vacancy which

shall be filled in the manner provided in Section 78482.

78484. The director shall give notice, not later than January 31 of each year, of the vacancies that will exist upon the expiration of terms on March 31, in writing, to all marketing associations and organizations deemed by the director to represent the majority of organized fishermen, or receivers, processors, wholesalers, and exporters, and shall issue any press releases and public statements requesting nominations that the director deems appropriate.

78485. (a) The notice requesting nominations shall indicate that nominations shall be mailed to the director at his or her office in Sacramento and that the director will consider nominations received by mail postmarked no later than March 15.

(b) Each nomination shall set forth all of the following information:

(1) The name and address of the nominee.

(2) Whether the nominee is being nominated as a member or alternate member.

(3) The type of category for which the nominee is being nominated.

(4) The list of qualifications and supporters, if any, for the nominee.

(5) The name and address of the nominating association, organization, or individual.

78486. One nonvoting member of the council shall be appointed by the director to represent each of the following agencies:

(a) The department.

(b) The Department of Fish and Game.

(c) The California Sea Grant Program.

(d) The West Coast Fisheries Development Foundation or the Coastal Resources Center.

(e) The California State World Trade Commission.

78487. There is no fixed term for nonvoting members of the council. The agencies listed in Section 78486 may select an alternate for their representative.

78488. A majority of the voting members of the council shall constitute a quorum for the transaction of all business, including the election of officers.

78489. (a) The council shall select annually from its voting number, to serve at its pleasure, a chair and vice chair.

(b) The chairperson and vice chairperson, together with four other voting members, selected annually by the council, shall constitute the executive committee of the council. The executive committee shall have and exercise any powers of the council that the council delegates to the executive committee.

78490. The council shall hold at least two regular meetings in each year at times and places which are fixed by the council. The times for regular meetings shall be fixed so that there is an interval of at least four calendar months between the meetings. The council may meet in special meetings at any time and place at the call of the

chairperson or upon the written request of five members of the council. The executive committee shall have at least two regular meetings each year at times and places which are fixed by it, and may meet in special meetings at any time and place at the call of the chair or on call of a majority of the members of the executive committee.

78491. The voting members of the council shall receive forty dollars ($40) per day per diem for each day spent in actual attendance at the meetings or on the business of the council and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their official duties. However, during the first year of council operations, all members shall serve at their own expense. Nonvoting members shall be reimbursed for necessary traveling and other expenses at the same rate as voting members if the agency they represent does not reimburse them for those expenses. Alternates shall be reimbursed for traveling and other expenses and shall receive per diem at the same rate as voting members for meetings which they attend.

78492. No member of the council, except a member of the executive committee, shall receive per diem for more than seven days per month, except the chairperson, who may receive per diem for not more than 10 days per month.

78493. The director may require any employee or agent of the council to give a fidelity bond, executed by a surety company which is authorized to do business in this state, in favor of the director, in the sum, and containing any terms and conditions, that the director may prescribe. The cost of the fidelity bonds of employees or agents of the council shall be paid from the funds which are collected pursuant to this chapter.

78494. No member or employee of the council shall be held responsible individually to any person for liability on any contract or agreement of the council. All salaries, expenses, costs, obligations, and liabilities which arise out of the administration and enforcement of this chapter are payable only from funds which are collected pursuant to this chapter.

78495. An alternate member of the council shall sit as a voting member of the council if the member for whom he or she is an alternate does not attend any meeting of the council. When so serving, the alternate member has all of the powers, duties, liabilities, and immunities of the member in whose place he or she is serving, except that the alternate to the chair or vice chair shall not perform the functions of those offices.

78496. The Legislature finds and declares that fishermen, receivers, processors, wholesalers, or exporters appointed to the council pursuant to this article are intended to represent and further the interest of the California commercial fisheries industry, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds and declares that, with respect to persons who are appointed to the council, the particular agricultural industry concerned is tantamount to, and constitutes,

the public generally within the meaning of Section 87103 of the Government Code.

Article 5. Powers and Duties

78500. The duties of the council shall be advisory, except as to those duties which may be delegated to it by the director or as otherwise designated in this chapter The council may, subject to the approval of the director, exercise any of the following powers which may be delegated to the council by the director:

(a) To recommend to the director regulations which relate to the administration and enforcement of this chapter.

(b) To investigate all matters which affect the administration of this chapter, and to report violations of this chapter to the director.

(c) To employ and, at its pleasure, discharge, a manager and any other employees it deems necessary, and to prescribe their duties and powers and fix their compensation.

(d) To contract for the services of any person.

(e) To establish offices and incur expenses incidental thereto.

(f) To make contracts and other agreements to research, develop, market, and promote the sale of seafood and seafood products from fisheries, as defined in subdivision (a) of Section 78407, and landed in California, on either a local, state, national, or international basis.

(g) (1) To cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or created by state or federal law, including, but not limited to, the West Coast Fisheries Development Foundation, the Coastal Resources Center, the California Salmon Council, and the National Fish and Seafood Promotion Council, which is engaged in work or activities similar to the work and activities of the council, and to recommend to the director the making of contracts and agreements with those organizations or agencies for carrying on joint programs of education, communication, research, publicity, and advertising.

(2) To recommend to the director the making of contracts and agreements with other councils, commodity commissions, or producer organizations for joint programs of publicity and advertising where those products are compatible with the promotion of seafood and seafood products from fisheries, as defined in subdivision (a) of Section 78407, and landed in California.

(3) In matters of research, to cooperate with organizations of recognized professional standing which are adequately equipped with facilities for the research which is contemplated.

(h) To recommend to the director the institution and promotion of scientific research to develop or discover, or both, the health, food, therapeutic, dietetic, and other uses of seafood.

(i) To recommend or contract for the development of voluntary product quality standards.

(j) To promote accurate labeling of California seafood as a means to educate consumers and the public about the benefits of California

seafood.

(k) (1) To receive, invest, and disburse funds pursuant to Article 7 (commencing with Section 78550).

(2) To allocate funds to agencies not specifically or solely engaged in carrying on research or promotion for seafood, if the council and the director are satisfied that those allocations will be beneficial to the California commercial fisheries and will tend to effectuate the declared purposes of this chapter.

78501. The council shall keep books, records, and accounts of all of its transactions, dealings, contracts, agreements, funds, and expenditures that it deems necessary. The books, records, and accounts shall at all times be open to inspection and audit by the director.

78502. A member, alternate, agent, or employee of the council shall not do any of the following:

(a) Appear before any legislative committee of the state or federal government as a representative of the council unless requested to do so by that committee.

(b) Lobby in any manner as a representative of the council.

78503. Funds which are collected pursuant to this chapter shall not be used for political contributions.

78504. The council shall prepare, annually, summarized statements of the activities in which it has been engaged in the previous annual period, and of the activities in which it proposes to engage in the ensuing annual period. The statements shall be made available to all marketing associations, organizations of fishermen and receivers, processors, wholesalers, and exporters, and individuals that request them in writing.

Article 6. Education, Research, and Public Information Programs

78525. The director shall conduct, or may cause the council to conduct, programs of education, research, or public information, which are designed to accomplish any of the following purposes, among others:

(a) Increase the consumption of seafood and seafood products from fisheries, as defined in subdivision (a) of Section 78407, and landed in California.

(b) Gather, publicize, and disseminate accurate and scientific information which shows the importance of the use and consumption of seafood and seafood products in relation to the public health, economy, and diet, and the proper nutrition of children and adults.

(c) Study means and methods which are employed in harvesting, processing, manufacturing, marketing, and distributing seafood and seafood products from the California commercial fisheries in order to comply with the sanitary and other regulations which are imposed by municipalities, this state, and the United States.

(d) Gather and disseminate information regarding the high standards which are observed and imposed to ensure pure and

wholesome seafood and seafood products from the California commercial fisheries.

(e) Gather and disseminate information regarding the harmful effects on the public health resulting from the breakdown or instability of the fisheries, the factors and conditions peculiar to the seafood industry which tend to cause an unbalanced production, and the price of seafood and seafood products from the California commercial fisheries in relation to the cost of other items of food in a balanced diet.

(f) Gather and disseminate information regarding the factors which tend to promote increased consumption of seafood and seafood products from the California commercial fisheries, stabilize the fisheries, and foster a better understanding and more efficient cooperation among fishermen, receivers, processors, and the consuming public.

78526. No program or activity which is conducted or sponsored pursuant to this chapter shall make false or unwarranted claims, or disparage the quality, value, use, or sale of any commodity authorized by law to be marketed in this state. No program or activity shall be conducted with reference to a private brand or trade name which refers to seafood and seafood products from the California commercial fisheries.

78527. The council shall not expend council funds for advertising brand name seafood products as determined by the council. The council may expend council funds to conduct cost-sharing advertising with nonbrand name seafood products from the California commercial fisheries.

Article 7. Financial Provisions

78550. In order to carry out the programs and administer the activities which are conducted pursuant to this chapter, except as specified in Section 78557, a fee shall be established by the director and, thereafter, shall be recommended to the director by the council, based on an amount which is four-tenths of 1 percent of the ex-vessel price per pound paid for each pound of fish or shellfish specified in subdivision (a) of Section 78407 sold to a receiver, or sold by a fisherman directly to the public pursuant to Section 8033.5 of the Fish and Game Code. The fee shall be paid by the receiver or the fisherman, or both, and remitted to the director as specified in Section 78552. The amount of the fee for each species shall be established annually by the council for recommendation to the director, calculated to the nearest $1/10{,}000$ of one cent ($0.0001) based on the formulation in this section. Individual fees shall be established for species identified in subdivision (a) of Section 78407. The council, with assistance from the Department of Fish and Game, may determine the fee structure for individual species and may average or consolidate fees for similar species to simplify landing fee reporting and accounting requirements. The amount of the fee shall

be based on the whole weight of the fish or shellfish, calculated on a conversion factor established by the Department of Fish and Game pursuant to Section 8042 of the Fish and Game Code. A fisherman selling to the public pursuant to Section 8033.5 of the Fish and Game Code shall remit the fee directly to the director as specified in Section 78552.

78551. The fisherman and the receiver shall each pay one-half of the fee established pursuant to Section 78550 for each pound of fish landed. If the fishermen vote, pursuant to Article 8 (commencing with Section 78575), not to participate in the council, a fisherman is not required to pay any fees pursuant to this chapter. If the receivers vote, pursuant to Article 8 (commencing with Section 78575), not to participate in the council, a receiver is not required to pay any fees pursuant to this chapter. If either fishermen or receivers, but not both, vote in favor of the council, the fee charged the group voting in favor of the council shall not exceed one-half of the fee established pursuant to Section 78550.

78552. The fees, whether from fishermen or receivers, or both, which are collected pursuant to this article shall be forwarded by the receivers, except as provided under Section 78550, to the director at the same time landing taxes are paid to the Department of Fish and Game pursuant to Section 8053 of the Fish and Game Code. The director shall supply forms necessary for the remittance of fees. The director may consult with the Director of Fish and Game and enter into agreements with the Department of Fish and Game, when he or she deems it necessary and reasonable, to assist in the administration of this article and to ensure compliance with this article.

78553. (a) Each receiver who is required by this chapter to pay a fee or collect a fee from fishermen shall maintain a complete and accurate record of all transactions subject to the fee. These records shall contain any information required by the director relating to the collection of fees, shall be preserved for a period of three years, and shall be available for review upon demand by the director or the director's duly authorized agent.

(b) Any information obtained by the director or the director's duly authorized agent from inspection or audit of records shall be confidential and shall not be disclosed except when required in a judicial proceeding.

78554. The collection of funds from anyone who does not pay or remit fees due and payable shall be conducted pursuant to Section 8053 of the Fish and Game Code.

78555. Every claim or refund for credit for overpayment of fees shall be in writing and shall state the specific ground upon which the claim is based.

78556. Sections 8058 to 8070, inclusive, of the Fish and Game Code apply to claims for overpayment of fees to the director. For purposes of this section, "department," as used in those sections, means the Department of Food and Agriculture, and "landing tax"

means the fees imposed pursuant to this article.

78557. One year after the establishment of the council, the council may recommend to the director an increase over and above four-tenths of 1 percent of the price per pound paid to the fisherman for each pound of fish or shellfish specified in subdivision (a) of Section 78407 for the council to carry out its duties under this chapter. The council shall consider the budget for the council, funding for activities conducted pursuant to Article 6 (commencing with Section 78525), as well as the market prices of seafood landed in California, landing taxes imposed by the Department of Fish and Game, and any other relevant factor affecting the economics of the fisheries. The council shall, in making any determination to increase fees, consult with fishermen and receivers and, if the recommended increase would exceed eight-tenths of 1 percent of the market price per pound paid to the fisherman for each pound of fish or shellfish sold, conduct a ballot poll of the fishermen and receivers on the director's list established pursuant to Article 8 (commencing with Section 78575). The director may not increase any fee without the approval of a majority of the voting members of the council.

78558. (a) All money which is collected by the director pursuant to this chapter shall be deposited in any bank, or other depository which is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the director or the council only for the necessary expenses which are incurred by the council and the director in carrying out the purposes and provisions of this chapter, including expenses generated by the auditing requirement contained in this section. Money which is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations adopted by the director. The expenditure of the money is exempt from Sections 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the State Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

(c) A copy of the audit shall be delivered within 30 days after completion of the audit to the Governor, the director, and the Controller.

78559. Money which is deposited pursuant to Section 78558 may be invested and reinvested by the Treasurer or the council in any of the securities described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, or placed in a depository as provided in Chapter 4 (commencing with Section 16500) of Part 2 of Division 4 of Title 2 of the Government Code, and handled in the same manner as money in the State Treasury. For these purposes, the money may also

be combined with funds which are determined by the director to be available for investment pursuant to Section 58939. Any increment which is received from investment, reinvestment, or deposit made by the Treasurer shall be remitted to the council. The Treasurer may deduct from the remittance an amount equal to the reasonable cost incurred in carrying out this section or may charge the council for the costs and the council shall pay the costs from money which is collected pursuant to this chapter.

78560. The director, after consultation with the council, shall adopt an annual budget which sets forth the proposed expenditures which the director deems necessary for the performance by him or her and by the department of the duties which are imposed upon the director and the department by this chapter. The director shall also prepare and submit to the council an annual statement of the director's expenditures pursuant to this chapter.

78560.5. The council may allocate a percentage of the contribution from one or a series of species and gear types to conduct species and gear specific programs. In developing specific programs, the council may form advisory committees comprised of harvesters and processors whose primary income is derived from the species considered for specific programs. The funds expended for any program directly benefiting a specific gear type or species of fish or shellfish shall not exceed that proportion of funds expended for general programs benefiting all the species and gear types under this chapter during each five-year term of the council. Proportional funding of species specific programs shall not be required in the annual budget for the year in which the program is first adopted, but proportional funding shall be required in the budget for each subsequent year that each such program is included in the annual budget.

78561. To the extent that programs for specific species of fish or shellfish are included in the budget, as opposed to programs to benefit generally all the species covered by this chapter, there shall be reflected in that same year's budget, or in budgets prepared for the following years, programs for other species of fish and shellfish covered under this chapter. The funds expended pursuant to the council's budget for any program for a specific species of fish and shellfish shall be in the same proportion, based on the fees collected from that species of fish or shellfish, as that expended for each of the other species of fish and shellfish covered under this chapter. Proportional funding of species-specific programs are not required in the annual budget for the year in which the program is first adopted, but proportional funding shall be required in the budget for each subsequent year that each such program is included in the annual budget.

78562. The director may borrow funds, receive grants of funds, or receive contract funds from the Local Marine Fisheries Impact Program pursuant to subdivision (b) of Section 35062 of the Public Resources Code, upon approval of the Secretary of Environmental

Affairs, or may borrow or receive grants of funds from any person or entity in amounts that may be reasonable and necessary to defray the initial expenses in implementing this chapter. The council shall reimburse the person or entity from any funds which are received by the director pursuant to this article.

78563. The director may accept contributions from any source or may receive grants or contracts for funds from the Secretary of Environmental Affairs pursuant to subdivision (b) of Section 35062 of the Public Resources Code to advance the purposes of this chapter. If requested by the donor, the contributions shall be segregated and separately maintained for the use of the council.

Article 8. Implementation, Voting Procedure, and Termination

78575. On or before February 1, 1991, the director shall establish a list of receivers and fishermen eligible to vote on the implementation of this chapter. In establishing the list, the director may request, in writing, the assistance of the Director of Fish and Game and associations representing fishermen or receivers in gathering the names of all fishermen and receivers who sold or received specified seafood species landed the previous season. The list shall be filed within 30 days following receipt of the written notice from the director. All information on the volume of landings shall be kept confidential.

78576. Any fisherman or receiver whose name does not appear on the director's list of receivers may have his or her name included on the list by filing with the director a signed statement, identifying himself or herself as a fisherman or receiver and furnishing evidence of having sold or received landings the previous year through the submission of receipts prepared under Section 8043 of the Fish and Game Code. The failure to include a fisherman's or a receiver's name on the list does not exempt a fisherman or a receiver from paying assessments under this chapter.

78577. This chapter, except as necessary to conduct an implementation referendum vote under this article, shall not become operative until the director conducts and finds in such implementation referendum that either:

(a) At least 40 percent or more of the total number of fishermen from the list established by the director pursuant to Section 78575 have participated by voting in the referendum, and the director finds either of the following:

(1) Sixty-five percent or more of the fishermen who voted in the referendum, who landed in California 51 percent or more of the species listed in subdivision (a) of Section 78407 in the previous fiscal year, voted in favor of implementing this chapter.

(2) Fifty-one percent of the fishermen who voted in the referendum, who landed in California 65 percent or more of the species listed in subdivision (a) of Section 78407 in the previous fiscal year, voted in favor of implementing this chapter.

(b) Forty percent or more of the total number of receivers from the list established by the director pursuant to Section 78575 have participated by voting in the referendum, and the director finds either of the following:

(1) Sixty-five percent or more of the receivers, who received 51 percent or more of the species listed in subdivision (a) of Section 78407 landed in California in the previous fiscal year, voted in favor of implementing this chapter.

(2) Fifty-one percent or more of the receivers, who received 65 percent or more of the fish of the species listed in subdivision (a) of Section 78407 landed in California in the previous fiscal year, voted in favor of implementing this chapter.

(c) If both lists of fishermen and receivers vote in favor of the implementation of this chapter, the director shall establish the council pursuant to Sections 78475 and 78476. If only the fishermen vote in favor of implementation of this chapter, or if only the receivers vote in favor of implementation of this chapter, the director shall establish the council pursuant to Section 78477.

78578. The director shall establish a period in which to conduct the implementation referendum which shall not be less than 30 days or more than 60 days in duration, and may prescribe additional procedures as necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend that period. However, the total referendum period may not exceed 60 days or extend past April 1, 1991.

78579. (a) Unless funds are otherwise provided by the Secretary of Environmental Affairs pursuant to subdivision (b) of Section 35062 of the Public Resources Code, before the referendum vote is conducted by the director, the proponents of the council shall deposit with the director the amount that the director determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the council who deposited the funds with the director.

(c) Upon the establishment of the council, the council may reimburse the proponents of the council for any funds deposited by the proponents with the director which were used in carrying out this article, and for any legal expenses and costs incurred in establishing the council.

78580. The nonreceipt of a ballot by any fisherman or receiver shall not invalidate a referendum.

78581. (a) If the director finds that a favorable vote has been given, the director shall certify and give notice of the favorable vote to all receivers whose names and addresses are on file with the director.

(b) If the director finds that a favorable vote has not been given, the director shall so certify and declare this chapter inoperative. The director shall also notify the appropriate policy committees in both

the Assembly and Senate that the chapter is inoperative.

78582. Fisheries for fish and shellfish species not covered under this chapter may be added to Section 78407 for the purposes of this chapter, including the payment of fees pursuant to Sections 78550 to 78557, inclusive, upon receipt by the director of a written request by proponents for inclusion, who shall be either fishermen or receivers, or both, who are engaged in that fishery not previously included under Section 78407. The fishery shall be included under this chapter after all of the following occur:

(a) The council recommends to the director the inclusion of the fishery, subject to the request by proponents for inclusion.

(b) The proponents for inclusion deposit funds with the director in an amount the director determines is necessary to defray the expenses of preparing necessary lists and information and conducting an inclusion referendum vote of fishermen or receivers, or both, from those engaged in the fishery proposed for inclusion.

(c) A list of fishermen or receivers, or both, engaged in the fishery proposed for inclusion is established. The director shall establish the list not later than 60 days following the receipt of the deposit pursuant to subdivision (b).

(d) An inclusion referendum, which is not more than 60 days in duration is conducted within 90 days following the receipt of the deposit pursuant to subdivision (b) under the regulations that the director established, consistent with all other provisions for carrying out a referendum under this chapter.

(e) A favorable vote, consistent with the percentage requirements of Section 78577 for a favorable vote, of either fishermen or receivers, or both, of those engaged in the fishery proposed for inclusion and eligible to vote is received.

78583. Species of fish and shellfish, that are not previously included under the fisheries in Section 78407 or a prior inclusion referendum pursuant to Section 78582 and that are added under an inclusion referendum pursuant to Section 78582, shall be treated the same as all other species of fish and shellfish under this chapter, and fishermen and receivers engaged in the fishery of that included species may be considered for council membership in subsequent appointments by the director to the council.

78584. (a) Between January 1, 1996, and February 28, 1996, and in the same period each five years thereafter, or pursuant to subdivision (b) of Section 78578, the director shall, by the public hearing procedure, and if appropriate, the review referendum procedure provided for in Sections 78585 and 78586, determine whether the council program provided for in this chapter shall continue in effect.

(b) If the director finds from evidence received at the hearing that a substantial question exists as to whether the council program is contrary to or does not effectuate the declared purposes or provisions of this chapter or receives in writing a referendum petition with the signatures of 25 percent or more of the number of

fishermen or receivers, as evidenced by receipts prepared under Section 8043 of the Fish and Game Code, the council program shall be submitted to referendum as provided in Section 78585.

78585. If the director determines that a review referendum procedure is appropriate or, pursuant to subdivision (b) of Section 78578, required, the director shall establish a referendum period of not to exceed 30 days during which period ballots shall be submitted to every fisherman or receiver, statewide. If the director determines that the referendum period does not provide sufficient time for the balloting, the director may extend the referendum for an additional period not to exceed 30 days. The ballots shall provide a "yes" or "no" voting alternative to the following question:

"Shall the California Seafood Council be continued for the next five fiscal years commencing April 1, following this referendum?"

78586. If the council program is submitted to a review referendum under Section 78585, the director shall find that fishermen or receivers statewide have approved the council program if the director finds either of the following:

(1) Sixty-five percent or more of the fishermen who voted in the review referendum, who landed in California 51 percent or more of the fish of the species listed in subdivision (a) of Section 78407 in the previous fiscal year, approve the program; or 51 percent or more of the fishermen, who landed in California 65 percent or more of the fish of the species listed in subdivision (a) of Section 78407 in the previous fiscal year, approve the program.

(2) Sixty-five percent or more of the receivers who voted in the review referendum, who received 51 percent or more of the fish of the species listed in subdivision (a) of Section 78407 landed in California in the previous fiscal year, approve the program; or 51 percent or more of the receivers, who received 65 percent or more of the fish of the species listed in subdivision (a) of Section 78407 landed in California in the previous fiscal year, approve the program.

78587. If the director finds that only the fishermen or only the receivers vote to approve the program in a review referendum, the director shall reconstitute the council pursuant to Section 78477. To reduce the membership on the council of either the fishermen or the receivers, whichever did not vote to approve the program, the director shall conduct a lottery of those choosing to remain from the nonapproval group to determine who shall remain on the council.

78588. On the termination of the council pursuant to this article, the council shall remain in existence for the purpose of furnishing the director with a complete record of its outstanding financial obligations. The director shall pay from the money deposited and disbursed any outstanding obligations and any obligations incurred by the director and the department under this section. Any money which remains shall be retained by the director to defray the expenses of formulation, issuance, administration, or enforcement of any subsequent program for seafood promotion. If no such program is undertaken within a period of three years from the date of

termination of the council, that money shall be withdrawn from the approved depository and paid into the special account for enchancement and restoration programs established pursuant to Section 7861 of the Fish and Game Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1152

An act to repeal and add Section 8710 of the Elections Code, relating to elections.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 8710 of the Elections Code is repealed.

SEC. 2. Section 8710 is added to the Elections Code, to read:

8710. (a) The state central committee shall convene in Sacramento after a general election not later than the last weekend in March. The meeting shall begin not later than 10 a.m. on Saturday.

(b) Notwithstanding subdivision (a), in 1991, the meeting may be convened in any city in northern California designated by the party.

CHAPTER 1153

An act to amend Section 25995.3 of, and to add Sections 25995.8, 25996.90, and 25996.91 to, the Health and Safety Code, relating to dogs.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

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

(a) A study by the Assembly Office of Research found that pet store dogs coming from out of state were three times as likely to be sick.

(b) The study also found that nearly 70 percent of puppies sold were identified by pet stores as coming from out of state.

(c) The Assembly Office of Research study, further, discovered that pet stores named by veterinarians as sources of sick puppies acquired nearly 84 percent of their puppies from out of state.

(d) The study found that more than 50 percent of out-of-state puppies were incubating a disease or sick at the time of purchase.

(e) The largest source of out-of-state puppies come from the midwestern states of Kansas, Missouri, Nebraska, Iowa, Oklahoma, and Arkansas.

SEC. 2. Section 25995.3 of the Health and Safety Code is amended to read:

25995.3. Every retail dealer shall deliver to the purchaser of each dog and cat at the time of sale a written statement in a standardized form prescribed by the Department of Consumer Affairs containing the following information:

(a) If the person from whom the dog or cat was obtained is a dealer licensed by the United States Department of Agriculture, the person's name, address, and federal dealer identification number.

(b) The date of the animal's birth, unless unknown because of the source of such animal.

(c) A record of the immunizations administered to the animal as of the time of sale, including the dates of administration and the type of vaccine.

(d) A record of any known disease or sickness that the cat is afflicted with at the time of sale.

(e) A record of any veterinarian treatment or medication received by a dog while in the possession of a retail pet dealer to treat any disease, illness, or condition that required hospitalization or surgical procedures, and either of the following:

(1) A statement that the dog has no known disease, illness, or condition that requires hospitalization or surgical procedures at the time of sale.

(2) A record of any known disease, illness, or condition that requires hospitalization or surgical procedures that the dog is afflicted with at the time of sale, along with a statement, signed by a licensed veterinarian in the State of California, which authorizes the sale of the dog, recommends necessary treatment, if any, and verifies that the disease, illness, or condition does not require hospitalization or surgical procedures. A veterinarian statement is not required for intestinal or external parasites unless their presence makes the dog clinically ill or is likely to make the dog clinically ill. The statement shall be valid for seven days following inspection of the dog by the veterinarian.

(f) A disclosure made pursuant to paragraph (2) of subdivision (e) shall be signed by both the pet dealer certifying the accuracy of the statement, and the purchaser of the dog acknowledging receipt of the statement. In addition, all information required to be disclosed pursuant to this subsection shall be made orally to the purchaser.

(g) For purposes of this section and Section 25995.8, a disease, illness, or condition that requires hospitalization or surgical

procedures shall be one which is apparent at the time of sale or which should have been known by the retail pet dealer from the history of veterinary treatment disclosed pursuant to subdivision (e).

SEC. 3. Section 25995.8 is added to the Health and Safety Code, to read:

25995.8. Except as provided for in subdivision (e) of Section 25995.3, no retail pet dealer shall knowingly sell a dog which is diseased, ill, or has a condition that requires hospitalization or surgical procedures. In lieu of the civil penalties imposed pursuant to Section 25995.5, any retail pet dealer who violates this section shall be subject to a civil penalty of up to one thousand dollars ($1,000) or shall be prohibited from selling dogs at retail for up to 30 days, or both. If there is a second offense, the retail pet dealer shall be subject to a civil penalty of up to two thousand five hundred dollars ($2,500), or a prohibition from selling dogs at retail for up to 90 days, or both. For a third offense, the retail pet dealer shall be subject to a civil penalty of up to five thousand dollars ($5,000) or a prohibition from selling dogs at retail for up to six months, or both. For a fourth offense, the retail pet dealer shall be subject to a civil penalty of up to ten thousand dollars ($10,000) or a prohibition from selling dogs at retail for up to one year, or both.

An action for recovery of the civil penalty and for a court order enjoining the retail pet dealer from engaging in the business of selling dogs at retail for the period set forth in this section, may be prosecuted by the district attorney for the county in which the violation occurred, in the appropriate court.

SEC. 4. Section 25996.90 is added to the Health and Safety Code, to read:

25996.90. Every retail dealer shall post conspicuously on the cage of each dog offered for sale a notice indicating the state in which the dog was bred and brokered.

SEC. 5. Section 25996.91 is added to the Health and Safety Code, to read:

25996.91. (a) Every retail dealer shall post conspicuously within close proximity to the cages of dogs offered for sale, a notice containing the following language in 100-point type:

"Information on the source of these dogs, and veterinary treatments received by these dogs is available for review."

(b) Every retail dealer shall, upon request, make immediately available to prospective purchasers the following information on every dog offered for sale:

(1) The breeder's and broker's name, address, and, if licensed by the United States Department of Agriculture, the breeder's and broker's federal dealer identification number.

(2) If purebred or registerable with a dog registry, the date of birth of the dog.

(3) A record of vaccinations administered to the dog, including

dates of administration, and the number and types of vaccines.

(4) A record of any known disease, sickness, or illness of the dog.

(5) The sire's and the dam's registration number from the Orthopedic Foundation for Animals, if any.

CHAPTER 1154

An act to add Section 17054.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 17054.7 is added to the Revenue and Taxation Code, to read:

17054.7. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for a "qualified senior head of household" (as defined in subdivision (c)) an amount equal to 2 percent of the taxable income. The amount of the credit under this section shall not exceed seven hundred fifty dollars ($750) for any taxable year.

(b) For each taxable year beginning on or after January 1, 1991, 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 home ownership for all items from June 1990 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 pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the 1990 taxable year maximum credit by the inflation adjustment factor provided in paragraph (2), rounded off to the nearest one dollar ($1).

(c) "Qualified senior head of household" means an individual who meets all of the following:

(1) Attained the age of 65 before the close of the taxable year.

(2) Qualified as the head of household in accordance with Section 17042 for either of the two taxable years immediately preceding the taxable year by providing a household for a qualifying individual who died during either of the two taxable years immediately preceding the taxable year.

(3) Whose adjusted gross income for the taxable year does not

exceed thirty-seven thousand five hundred dollars ($37,500).

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1155

An act to add Section 148.10 to the Penal Code, relating to crimes.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 148.10 is added to the Penal Code, to read:

148.10. (a) Every person who willfully resists a peace officer in the discharge or attempt to discharge any duty of his or her office or employment and the willful resistance of the person proximately causes death or serious bodily injury to a peace officer, shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or both the fine and imprisonment, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) For purposes of subdivision (a), the following facts shall be found by the trier of fact:

(1) That the peace officer's action was reasonable based on the facts or circumstances confronting the officer at the time.

(2) That the detention and arrest was lawful and there existed probable cause or reasonable cause to detain.

(3) That the person who willfully resisted, any peace officer knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.

(c) This section shall not apply to conduct which occurs during labor picketing, demonstrations, or disturbing the peace.

(d) For purposes of this section, "serious bodily injury" is defined in paragraph (5) of subdivision (f) of Section 243.

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 1156

An act to add Section 10302.5 to the Public Contract Code, and to amend Sections 42240, 42244, 42371, 42373, and 42411 of the Public Resources Code, relating to state purchasing.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 10302.5 is added to the Public Contract Code, to read:

10302.5. All product specifications that the Department of General Services prepares for goods containing recycled materials for any contract entered into by any state agency for the purchase of goods under Section 10295 are not subject to the review and adoption procedure under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 42240 of the Public Resources Code is amended to read:

42240. The Department of General Services and the board, in consultation with other affected state agencies, shall, on or before January 1, 1991, adopt specifications for the purchase of compost by the State of California. The specifications shall designate the state minimum operating standards and product quality standards. The specifications shall be designed to maximize the use of compost without jeopardizing the safety and health of the citizens of the state or the environment.

SEC. 3. Section 42244 of the Public Resources Code is amended to read:

42244. On or after January 1, 1991, the board shall evaluate compost, co-compost, and chemically fixed sewage sludge for use as solid waste landfill cover materials or for use as extenders for currently used cover material. Compost, co-compost, and chemically fixed sewage sludge products, when used as a substitute for or mixed with currently approved cover material, shall possess all the physical characteristics required in the definition of a cover material. The results of the evaluation shall be reported in accordance with the reporting requirements of Section 42247.

SEC. 4. Section 42371 of the Public Resources Code is amended to read:

42371. The Office of Procurement, in cooperation with the board, shall develop and adopt specifications for the procurement of recycled secondary and postconsumer plastic products by July 1, 1992.

SEC. 5. Section 42373 of the Public Resources Code is amended to read:

42373. On or before July 1, 1992, the board shall perform a study

to identify methods to increase the utilization of recyclable plastics in manufacturing of new products. The report shall identify laws, specifications, and institutional barriers to the development of markets for recyclable plastics. The results of the study shall be included in the report required pursuant to Section 42950.

SEC. 6. Section 42411 of the Public Resources Code is amended to read:

42411. The Department of General Services and the board, in consultation with representatives of the California retreading industry, shall adopt specifications for the purchase of retreaded tires by the State of California. The specifications shall designate the state minimum quality standards for retreaded tires. The specifications shall be designed to maximize the use of retreads without jeopardizing the safety of the occupants of the vehicle or the intended end use of the tire.

CHAPTER 1157

An act to amend Section 98.6 of, and to add Sections 98.66 and 98.67 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Sections 98.66 and 98.67, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

SEC. 1.3. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Sections 98.66 and 98.67, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation

Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the

legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing

body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

(n) Notwithstanding any other provision to the contrary, the governing body of Marin County shall not allocate pursuant to this section to any special district, other than a special district governed by the county board of supervisors or whose governing board is the same as the county board of supervisors, an amount which is less than the amount of the reduction determined for that district pursuant to subdivision (a). However, if an allocation shall cause a special district to exceed its appropriations limit established pursuant to Section 7910 of the Government Code, the governing body shall reduce that allocation in an amount equal to the amount which is in excess of that district's appropriations limit.

SEC. 1.5. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Sections 98.65, 98.66, and 98.67, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made

to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

SEC. 1.7. Section 98.6 of the Revenue and Taxation Code is amended to read:

98.6. (a) Notwithstanding any other provision of this chapter except Sections 98.65, 98.66, and 98.67, the amount allocated pursuant to Sections 96 or 97, and 98, to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the board of supervisors of a county or whose governing body is the same as the board of supervisors of a county, shall be reduced by an amount computed as follows:

(1) A ratio shall be computed for each of the special districts equal to the amount of state assistance payment for the special district for the 1978–79 fiscal year divided by the sum of the state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

(2) The amount by which the allocation is reduced pursuant to Sections 75.70, 96 or 97, and 98, shall be equal to the allocation multiplied by the factor computed for the district pursuant to paragraph (1).

(3) For the 1984–85 fiscal year and each fiscal year thereafter, the amount computed for each special district pursuant to this subdivision, other than a special district governed by a county board of supervisors or whose governing board is the same as the county board of supervisors, shall not be greater than the amount computed for the 1983–84 fiscal year.

(4) Notwithstanding paragraph (3), for the 1988–89 fiscal year and each fiscal year thereafter, the amount computed for each special district, which, on or after July 1, 1988, ceases to be governed by the county board of supervisors or whose governing body ceases to be the same as the county board of supervisors, shall not be greater than the average annual amount computed for the last three full fiscal years in which the special district was governed by the county board of supervisors or its governing body was the same as the county board of supervisors.

(5) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

(6) Notwithstanding any other provision of law, for purposes of this section, an existing mosquito abatement district, as provided for in Chapter 5 (commencing with Section 2108) of Division 3 of the Health and Safety Code, located in Monterey County that, on or after

January 1, 1988, annexes property in a county adjoining Monterey County and which prior to the date of annexation is not a multicounty district, shall not be deemed a multicounty district.

(b) There is hereby created a Special District Augmentation Fund in each county to augment the revenues of special districts. On or before June 1 of each year, the governing body shall notify each special district of the estimated amount of funds in the Special District Augmentation Fund available to special districts in the coming fiscal year. The auditor shall, on or before August 31 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

(c) Within 15 days of the notice, the governing body shall hold a public hearing for the purpose of determining the distribution of the funds. The governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council. The notice shall include all of the following:

(1) The amount of funds disbursed to each special district and the amount of funds disbursed pursuant to subdivision (j) in the past fiscal year.

(2) The amount of funds computed pursuant to subdivision (a).

(3) The amount of funds proposed to be allocated pursuant to subdivision (j).

(4) The time and place of the hearing.

The governing body shall also publish the notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The published notice shall include the time and place of the hearing.

(d) Within 30 days of the notice of allocation, the governing body shall allocate the funds to special districts, and may allocate funds pursuant to subdivision (j). The governing body shall disburse the entire amount of the fund to special districts during the fiscal year, except for the amounts allocated pursuant to subdivision (j).

(e) In determining the amount of funds to be disbursed to each special district, the governing body shall not consider any revenues raised by a special district pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1, or Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(f) In determining the amount of funds to be allocated to each special district, the governing body may consider the revenues which are raised, or could be raised, by a special district from its enterprise activities.

(g) In determining the amount of funds to be allocated to each special district, the governing body shall not allocate funds to any special district which is governed by the board of supervisors or the city council if the governing body intends that those funds are to be transferred to that county or city upon or after disbursement to the

special district, except as reimbursement to the city or county for services rendered to the special district.

(h) Within 30 days after determining the amount of funds to be allocated, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council which shall include:

(1) The total amount of funds computed pursuant to subdivision (a).

(2) The amount of funds allocated to each special district.

(3) The amount of funds allocated pursuant to subdivision (j).

(i) In determining the amount of funds to be disbursed to a special district, the governing body may restrict the use of the funds requested by a special district for purposes of capital purchases to those purposes.

(j) The funds allocated pursuant to this section shall be used exclusively for special districts and shall not be used for any general county or municipal expenses, except that:

(1) The governing body may allocate to its general fund an amount not to exceed the actual demonstrated cost of administering the Special District Augmentation Fund, which shall be an amount necessary to reimburse the actual demonstrated expenditures made to carry out the requirements of subdivisions (a) to (i), inclusive, and also the actual demonstrated cost of providing the assistance requested by special districts, which amount shall not exceed 1 percent of the amount in the fund.

(2) The governing body may allocate to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only the costs of the following:

(A) Expenses incurred by special districts in the event of an emergency. As used in this subparagraph, "emergency" means a sudden, unexpected occurrence which threatens the public peace, health, safety, or welfare and which is, or is likely to be, beyond the control of the services, personnel, equipment, or facilities of the special district.

(B) To carry out the purposes of the California Special District Consolidation Assistance Program established pursuant to Chapter 9.5 (commencing with Section 60350) of Division 2 of Title 6 of the Government Code.

(C) To establish a Special District Augmentation Fund Loan program. The program funds may be loaned to special districts under those terms and conditions and in those amounts as are specified by the governing body.

(3) Notwithstanding the limits of paragraph (2), the governing body of a county with a population of less than 50,000, as determined by the Department of Finance, may allocate an amount not to exceed 2 percent of the fund. Those governing bodies may accumulate in the special account an amount not to exceed 5 percent of the fund over a period of three fiscal years.

(4) The governing body shall disburse to special districts any amount allocated pursuant to this subdivision which is greater than the limits set by paragraphs (2) and (3) in the succeeding fiscal year.

(5) Notwithstanding the limits of paragraph (2), the governing body of Monterey County or Santa Cruz County may accrue annually to a special account in its general fund an amount not to exceed 1 percent of the amount of the Special District Augmentation Fund to pay only for the costs specified in paragraph (2). However, the total amount that may be accrued pursuant to this paragraph shall not exceed 4 percent of the amount of the Special District Augmentation Fund. Any interest which accrues to this special account shall be considered part of this account and shall not be allocated or distributed in any way to the general fund of the governing body.

(k) The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurer's property tax trust fund.

(*l*) Disbursements to cities with more than one subsidiary special district may be made to the city. Each city shall distribute these funds to their individual subsidiary special districts in accordance with the city council's final determination.

(m) Any interest which accrues to the Special District Augmentation Fund shall be considered part of the fund and shall not be allocated or distributed in any way to the general fund of the governing body.

(n) Notwithstanding any other provision to the contrary, the governing body of Marin County shall not allocate pursuant to this section to any special district, other than a special district governed by the county board of supervisors or whose governing board is the same as the county board of supervisors, an amount which is less than the amount of the reduction determined for that district pursuant to subdivision (a). However, if an allocation shall cause a special district to exceed its appropriations limit established pursuant to Section 7910 of the Government Code, the governing body shall reduce that allocation in an amount equal to the amount which is in excess of that district's appropriations limit.

SEC. 2. Section 98.66 is added to the Revenue and Taxation Code, to read:

98.66. (a) Notwithstanding any provision of Section 98.6 to the contrary, fire protection districts formed pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code or its statutory predecessors, and resource conservation districts formed pursuant to Chapter 3 (commencing with Section 9151) of Division 9 of the Public Resources Code, which are located entirely within Santa Cruz County shall contribute to the Special District Augmentation Fund pursuant to Section 98.6 but shall receive their allocations from the Special District Augmentation Fund pursuant to subdivision (c).

(b) Notwithstanding any provision of Section 98.6 to the contrary,

for the 1990–91 fiscal year and each fiscal year thereafter, the Auditor-Controller of Santa Cruz County shall reduce property tax revenue pursuant to Sections 75.70, 96, 97, and 98, by the amount computed pursuant to subdivision (a) of Section 98.6 in the 1989–90 fiscal year for each special district described in subdivision (a), and those amounts shall be deposited in the Special District Augmentation Fund.

(c) Notwithstanding any provision of Section 98.6 to the contrary, for the 1990–91 fiscal year and each fiscal year thereafter, the Auditor-Controller of Santa Cruz County shall allocate to each special district described in subdivision (a) from the Special District Augmentation Fund the amount contained in the resolution regarding distribution of funds from the Special District Augmentation Fund, adopted by the Santa Cruz County Board of Supervisors on June 12, 1990.

(d) In the event that there is a change of organization of one or more special districts described in subdivision (a) subsequent to the 1989–90 fiscal year, the special district resulting from the change of organization shall succeed to all rights and obligations of the predecessor district or districts with respect to the allocation of property tax revenues to the Special District Augmentation Fund and the allocation of funds from the Special District Augmentation Fund.

(e) Nothing in this section shall preclude the Board of Supervisors of Santa Cruz County from allocating the amounts permitted in subdivision (j) of Section 98.6.

SEC. 3. Section 98.67 is added to the Revenue and Taxation Code, to read:

98.67. (a) Fire protection districts formed pursuant to the Fire Protection District Law of 1987, Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code and community services districts which provide fire protection formed pursuant to Community Services District Law, Division 3 (commencing with Section 61000) of Title 6 of the Government Code, which are located entirely within Monterey County, shall contribute to the Special District Augmentation Fund pursuant to Section 98.6 but shall receive their allocations pursuant to subdivision (c) of this section.

(b) Notwithstanding Section 98.6, for the 1990–91 fiscal year and each fiscal year thereafter, the Auditor-Controller of Monterey County shall reduce property tax revenue pursuant to Sections 75.70, 96, 97, and 98, by the amount computed pursuant to subdivision (a) of Section 98.6 in fiscal year 1989–90 for each special district described in subdivision (a).

(c) For the 1990–91 fiscal year and each fiscal year thereafter, the auditor-controller shall allocate to each special district described in subdivision (a) the amount contained in the resolution, regarding distribution of funds to fire agencies, adopted by the Monterey County Board of Supervisors on June 19, 1990.

(d) Nothing in this section shall preclude the Monterey County

Board of Supervisors from allocting the amounts permitted in subdivision (j) of Section 98.6.

(e) In the event there is consolidation or reorganization of one or more special districts during the 1989–90 fiscal year or during any subsequent fiscal year, the newly consolidated or reorganized district shall succeed to all rights and obligations of its predecessor district or districts with respect to allocation of funds.

(f) Notwithstanding subdivision (e), in the event there is a consolidation or reorganization involving a county service area formed pursuant to County Service Area Law, Part 2 (commencing with Section 25210) of Division 2 of the Government Code, the Auditor-Controller of Monterey County shall allocate to the successor agency the amount contained in the resolution regarding distribution of funds to fire agencies, adopted by the Monterey County Board of Supervisors on June 19, 1990.

SEC. 4. 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 in Monterey County and Santa Cruz County. The Legislature finds, therefore, that this special act is necessary. The facts constituting this necessity are:

Santa Cruz County and special districts located therein and Monterey County and fire protection districts and community services districts located therein bear special and unique burdens in complying with recent judicial decisions with regard to tax revenue allocations, and thereby require a special allocation process to ensure the orderly and proper management and expenditure of public funds.

SEC. 5. Notwithstanding any other provision of law, the reduction of property tax revenue for special districts resulting from calculations specified in Section 98.6 of the Revenue and Taxation Code, and the allocation of funds by the governing body under Section 98.6 of the Revenue and Taxation Code for the 1989–90 fiscal year and for all prior fiscal years in Santa Cruz County and Monterey County shall be deemed correct.

SEC. 6. (a) Section 1.3 of this bill incorporates amendments to Section 98.6 of the Revenue and Taxation Code proposed by both this bill and SB 2369. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 98.6 of the Revenue and Taxation Code, (3) AB 4215 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2369, in which case Sections 1.5 and 1.7 of this bill shall not become operative, and Section 98.6 of the Revenue and Taxation Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 2369, at which time Section 1.3 shall become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 98.6 of the Revenue and Taxation Code proposed by both this bill and AB 4215. It shall only become operative if (1) both bills are enacted

and become effective on or before January 1, 1991, (2) each bill amends Section 98.6 of the Revenue and Taxation Code, (3) SB 2369 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4215 in which case Sections 1.3 and 1.7 of this bill shall not become operative, and Section 98.6 of the Revenue and Taxation Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 4215, at which time Section 1.5 shall become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 98.6 of the Revenue and Taxation Code proposed by this bill, SB 2369, and AB 4215. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 98.6 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 2369 and AB 4215, in which case Sections 1.3 and 1.5 of this bill shall not become operative, and Section 98.6 of the Revenue and Taxation Code, as amended by Section 1 of this bill, shall remain operative only until January 1, 1991, at which time Section 1.7 shall become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. 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:

In order for the County of Santa Cruz and the County of Monterey to develop their respective budgets for the 1990–91 fiscal year and to ascertain what money will be available if the agreement is authorized by this act, it is necessary that this act take immediate effect.

CHAPTER 1158

An act to amend Sections 120050.2 and 120107.5 of the Public Utilities Code, relating to transit.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Section 120050.2 of the Public Utilities Code is amended to read:

120050.2. The board consists of 15 members, except as specified in subdivision (d), selected as follows:

(a) One member of the County of San Diego Board of Supervisors, appointed by the board of supervisors.

(b) Four members of the City Council of the City of San Diego, one of whom may be the mayor, appointed by the city council.

(c) One member of each city council appointed individually by the City Councils of the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee.

(d) One person, a resident of San Diego County, elected by a two-thirds vote of the board, a quorum being present, who shall serve as chairperson of the board. The chairperson shall serve for a term of four years, except that he or she is subject to removal at any time by a two-thirds vote of the board, a quorum being present. If the person elected chairperson is also a member of the board, the membership of the board is reduced to 14 and the appointing power may not fill the vacancy created by the election of that member as chairperson as long as that member remains chairperson and, if removed as chairperson, that person shall resume the position on the board he or she vacated upon election as chairperson. Section 120102.5 does not apply to any vote taken under this subdivision.

SEC. 2. Section 120107.5 of the Public Utilities Code is amended to read:

120107.5. (a) The board may, by ordinance, after a public hearing, provide that the chairperson be paid compensation in addition to that received as a member of the board.

(b) The compensation may be paid for representing the board before governmental and private agencies, and community and industry organizations and their officers and management, pursuing adequate financing for public transit in the region, participating in community relations for public transit, and undertaking additional duties as directed by the board. The services shall be separate from, and shall not include the performance of, any of the general manager's duties in administering and managing the board and its programs.

(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.

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 1159

An act to amend Sections 21120 and 21121 of the Public Contract Code, to repeal the Monterey County Flood Control and Water Conservation District Act (Chapter 699 of the Statutes of 1947), and to enact the Monterey County Water Resources Agency Act, relating to the Monterey County Water Resources Agency.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 21120 of the Public Contract Code is amended to read:

21120. The provisions of this article shall apply to contracts by the Monterey County Water Resources Agency, as provided for in the Monterey County Water Resources Agency Act.

SEC. 2. Section 21121 of the Public Contract Code is amended to read:

21121. All contracts for any improvement or unit of work when the cost thereof according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders in the manner hereinafter provided. The board shall first determine whether such contract shall be let as a single unit for the whole of the work, or shall be divided into severable convenient parts, or both, according to the best interests of the agency. The board shall make call for bids and advertise such call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the territory of the agency inviting sealed proposals for the construction or performance of the improvement or work before any contract made therefor. Such call for bids shall state whether such work is to be performed as a unit for the whole thereof or shall be divided into severable convenient specific parts, or both, as stated in the call. The board may let such work by single contract for the whole thereof as a unit or it may divide such work into severable convenient parts by separate contracts, as stated in such call, according to the best interests of the agency. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection therewith, such bonds to contain the terms and conditions set forth in Chapter 3 of Division 5 of Title 1 of the Government Code and to be subject to the provisions of that chapter. The board shall also have the right to reject any and all bids. In the event all proposals are rejected or no proposals are received pursuant to advertisement therefor, or the estimated cost of such work does not exceed the sum of five thousand

dollars ($5,000), or the work consists of channel protection, or maintenance work, or emergency work when necessary in order to protect life and property from impending flood damage, the board of supervisors may without advertising for bids therefor have said work done by force account. The agency shall have the power to purchase in the open market without advertising for bids therefor, materials and supplies for use in any work therewith either under contract or by force account.

SEC. 3. Sections 3 to 47, inclusive, of this act shall be known and may be cited as the Monterey County Water Resources Agency Act.

SEC. 4. A flood control and water agency is hereby created to be called the Monterey County Water Resources Agency. The agency shall consist of all the territory of the County of Monterey lying within the exterior boundaries of the county. As used in this act "agency" means the Monterey County Water Resources Agency.

SEC. 5. Notwithstanding the repeal of Chapter 699 of the Statutes of 1947, the agency shall have all of the authority, limitations, rights, and duties of the Monterey County Flood Control and Water Conservation District, except as otherwise provided by this act.

SEC. 6. The board of supervisors of the agency, by resolutions thereof adopted from time to time, may establish zones within the agency without reference to the boundaries of other zones, setting forth in the resolutions descriptions thereof by metes and bounds and entitling each of the zones by a zone number, and institute zone projects for the specific benefit of the zones.

Proceedings for the establishment of the zones may be conducted concurrently with and as a part of proceedings for the instituting of projects relating to the zones, which proceedings shall be instituted in the manner prescribed in Section 20.

SEC. 7. (a) At any time after the establishment of one or more zones for a project, the board may amend any or all of the zones if it appears to the board that circumstances have changed or that the initial determinations relating to the zone are now inappropriate. The amendments may include amending the zone boundaries to annex or detach territory; increasing or decreasing the number or zones relating to the project by the making of boundary changes, by the addition of new zones, or by the elimination of old zones; or changing the percentage of project benefits allocable to the zone. In order to make the amendment, the board shall follow the procedure for the initial establishment of zones, provided that the project itself need not be approved again.

(b) Notwithstanding subdivision (a), the extent of any zone and the percentages to be raised from any of several participating zones shall not be reduced until all bonds issued by the agency with respect to the zone and its project have been fully paid and discharged.

SEC. 8. The objects and purposes of this act are to provide for the control of the flood and storm waters of the agency and the flood and storm waters of streams that have their sources outside the agency, but which streams and flood waters flow into the agency, and to

conserve those waters for beneficial and useful purposes by spreading, storing, retaining, and causing those waters to percolate into the soil within the agency, or to save and conserve in any manner all or any of those waters and to protect from those flood or storm waters the public highways, life, and property in the agency, and the watercourses and watersheds of streams flowing into the agency, and to increase, and prevent the waste or diminution of the water supply in the agency, including the control of groundwater extractions as required to prevent or deter the loss of usable groundwater through intrusion of seawater and the replacement of groundwater so controlled through the development and distribution of a substitute surface supply and to prohibit groundwater exportation from the Salinas River Groundwater Basin, and to obtain, retain, and reclaim drainage, storm, flood, and other waters for beneficial use within the agency; and to provide, in the discretion of the agency in connection with and as an incident to any works, dam, or reservoir heretofore or hereafter constructed either within or without the agency, for the construction, maintenance, and operation of a minimum or permanent pool and facilities for swimming, boating, fishing, and recreation in or upon waters stored in any stream, reservoir, or minimum or permanent pool, and for the acquisition in any manner provided in this act and for the use by the agency, in addition or adjacent to lands that may be used or acquired for flood control or water conservation purposes or that may be acquired for the maintenance or protection of any such works, dam, or reservoir or watersheds adjacent thereto, of lands deemed by the supervisors of the agency to be necessary or convenient for the installation, construction, use, and maintenance of recreational areas or facilities, including picnic grounds, playgrounds, campgrounds, homesites, boats and fishing, bathing, or other facilities for use by the public, subject to such rules and regulations and reasonable charges as may be prescribed by the board of supervisors of the agency. However, no property situated in another county, shall be condemned by the agency for recreational areas or facilities unless the board of supervisors of the county in which the property is situated agrees to the condemnation thereof.

SEC. 9. The agency shall have, in addition to the other powers vested in it by this act, the following powers:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the agency in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter, and operate any and all works or improvements, within or without the agency, necessary or proper to carry out any of the objects or purposes of this act and convenient

to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair, or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

(e) To store water in surface or underground reservoirs within or outside of the agency for the common benefit of the agency or of any zone or zones affected; to conserve and reclaim water for present and future use within the agency; to appropriate and acquire water and water rights, and import water into the agency and to conserve within or outside of the agency, water for any purpose useful to the agency; to commence, maintain, intervene in, defend, or compromise, in the name of the agency on behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the agency, used or useful for any purpose of the agency or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend, and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the agency or of common benefit to the lands within the agency or to its inhabitants; to prevent unlawful exportation of water from the agency; to prevent contamination, pollution, or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in the agency, and to commence, maintain, and defend actions and proceedings to prevent any such interference with those waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the agency. However, the agency may not intervene or take part in, or to pay the cost or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the agency.

(f) To control the flood and storm waters of the agency and the flood and storm waters of streams that have their sources outside of the agency, but which streams and the flood waters thereof, flow into the agency, and to conserve those waters for beneficial and useful purposes of the agency by spreading, storing, retaining, and causing to percolate into the soil within or without the agency, or to save or conserve in any manner all or any of those waters and protect from damage from those flood or storm waters the watercourses, watersheds, public highways, life, and property in the agency, and the watercourses outside of the agency of streams flowing into the agency.

(g) To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments, or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments, or agencies, or with any public or private corporation, or with the County of Monterey, in the construction of any work for

the controlling of flood or storm waters of or flowing into the agency, or for the protection of life or property therein, or for the purpose of conserving those waters for beneficial use within the agency, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(h) To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without the agency relating to watercourses or streams flooding in or into the agency. For those purposes, the agency shall have the right of access through its authorized representatives to all properties within the agency and elsewhere relating to watercourses and streams flowing in or into the agency. The agency, through its authorized representatives, may enter upon those lands and make examinations, surveys, and maps thereof.

(i) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways, and other rights-of-way; to acquire by purchase, lease, contract, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair, and improvement of those works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to that end, and for those purposes and uses, to acquire and to hold in the name of the state, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the agency or any part thereof, upon the condition that when holding that stock, the agency shall be entitled to all the rights, powers, and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of that stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, city, district of any kind, public or private corporation, association, firm, or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works, or other property of a kind which might be lawfully acquired or owned by the agency; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch, or conduit not owned or controlled by the agency; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the agency, or to carry such water through any tunnels, canal, ditch, or conduit of the agency; to enter into and do any acts

necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm, or individual, or any number of them for the transfer or delivery to any district, corporation, association, firm, or individual of any water right or water pumped, stored, appropriated, or otherwise acquired or secured, for the use of the agency, or for the purpose of exchanging the same for other water, water right, or water supply in exchange for water, water right, or water supply to be delivered to the agency by the other party to the agreement; to cooperate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments, or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments, or agencies, or with any public or private corporation, in the construction of any work for controlling flood or storm waters of streams in or running into the agency, or for the protection of life or property therein, or for the purpose of conserving the waters for beneficial use within the agency, or for the protection, enhancement, and use of groundwater within the agency, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(j) To incur indebtedness and to issue bonds in the manner provided in this act.

(k) To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the agency, and to carry out any of the purposes of this act, in the manner provided in this act.

(*l*) To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in the agency or any of the officers thereof, by this act.

(m) To buy, provide, sell, and deliver water.

(n) To exchange water.

(o) To develop and distribute water to persons in exchange for ceasing or reducing groundwater extractions, and to prevent groundwater extractions which are determined to be harmful to the groundwater basin.

(p) To transport, reclaim, purify, desalinate, treat, or otherwise manage and control water for the beneficial use of persons or property within the agency.

(q) To construct, maintain, improve, and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the agency whether within or without the agency, subject to the limitations as to eminent domain use for recreational purposes outside the agency set forth in Section 4, and to provide by ordinance regulations binding upon all persons to govern the use of those facilities, including regulations imposing reasonable charges for the use thereof.

(r) To regulate, inspect, and license all structures, including docks and wharves, or structures used as docks or wharves, and their anchorage or mooring system, that float on or are designed to float

on the surface of reservoirs operated or contracted to be operated by the agency or that are located within the area subject to its flowage easement, or that are located on real property of the agency, and to charge a reasonable fee for licensing those structures. Any of those structures that are unlicensed more than 30 days after notice to license the structure has been posted thereon, or any unlicensed structure that is neither anchored nor moored, or is found on property owned in fee by the agency is a nuisance. The agency may have injunctive relief for any of those nuisances, or may summarily abate any untended structure floating on the surface of the reservoir that is neither anchored nor moored, or any untended structure found on property owned in fee by the agency. It shall be unlawful and it is hereby declared to be a misdemeanor to maintain, anchor, or moor or suffer to be maintained, anchored, or moored on property of which one is possessed any unlicensed structure when that structure is required to be licensed pursuant to this act. The misdemeanor shall be punishable by a fine not to exceed five hundred dollars ($500), or by imprisonment in the county jail for not to exceed six months, or by both that fine and imprisonment. Each day of violation of these provisions shall constitute a separate offense.

(s) To utilize any part of its water, and any part of its works, facilities, improvements, and property used for the development, storage, and transportation of water pursuant to this section to provide, generate, and deliver hydroelectric power, and to acquire, construct, operate, and maintain any and all works, facilities, improvements, and property necessary or convenient therefor.

(t) Pursuant to contract, to provide, generate, sell, and deliver hydroelectric power to the United States or any board, department, or agency thereof, to the state for the purposes of the State Water Resources Development System, and to any public agency, public utility, private corporation, or other person or public entity, or any combination thereof, engaged in the sale of electric power. For the purposes of this subdivision, "public agency" means a city, county, city and county, district, local agency, public authority, or public corporation.

(u) To construct, maintain, and operate works, facilities, improvements, and property of the agency useful or necessary for the provision, generation, and delivery of hydroelectric power, pursuant to subdivisions (s) and (t).

(v) To prevent the export of groundwater from the Salinas River Groundwater Basin, except that use of water from the basin on any part of Fort Ord shall not be deemed such an export. Nothing in this act shall be deemed to prevent the development and use of the Seaside Groundwater Basin for use on any lands within or without that basin.

SEC. 10. Notwithstanding any other provision of this act, the agency may authorize, issue, and sell revenue bonds pursuant to Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code to provide funds for acquiring,

constructing, improving, or financing any one or more revenue producing enterprises for any one or more of the purposes of the agency, or zone or participating zones thereof, or for refunding any outstanding bonds that should be incurred, and can be repaid and liquidated as to both principal and interest from revenues designated by the board. "Enterprise," as used in this section means a revenue-producing system, plant, works, or undertaking used for, or useful in, carrying out any one or more of the purposes of the agency. In connection with the authorization, issue, and sale of revenue bonds pursuant to this section and so long as any of these bonds remain outstanding, the agency may exercise, in addition to the powers covered by this section, any or all of the powers of local agencies provided for in Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code. Notwithstanding Sections 54382, 54400, and 54402 of the Government Code or any other provision of the law, the board may determine and provide, in any resolution providing for the issuance of the revenue bonds, for the following:

(a) For maturity dates of the bonds not exceeding 50 years from their respective dates.

(b) If, before the issuance of the bonds, the board determines, to the best of its knowledge and belief, that the interest on the bonds will be subject to federal income taxation under then existing law, for interest on the bonds at a rate or rates not exceeding 10 percent a year, payable annually or semiannually.

Any election for the issuance of revenue bonds for a zone or participating zones of the agency shall be limited to the area of that zone or participating zones, and the proceeds from the sale of any such revenue bonds shall be expended only for the benefit of that zone or participating zones.

No bonds authorized under this section shall be issued and sold until the bonds have been investigated and certified pursuant to the Districts Securities Law (Chapter 1 (commencing with Section 20000) of Division 10 of the Water Code).

SEC. 11. Whenever in the opinion of the board the public interest or convenience may require, it may order any work or improvement which it is authorized to undertake to be done in accordance with the procedure and pursuant to the provisions of either 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), or the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code)

The following terms, as used in those improvement acts, shall refer to the following for the purposes of this act:

(a) "Municipality" or "city" refers to the agency.

(b) "City council" or "legislative body" refers to the board.

(c) "City treasurer" or "treasurer" refers to the officer of the

agency who has charge of and makes payments of the agency funds.

(d) "Mayor" refers to the chairperson of the board.

(e) "Clerk" refers to the clerk of the agency.

(f) "Council chambers" refers to the place where the regular meetings of the board are held.

(g) "Superintendent of streets," or "street superintendent" and "city engineer" refer to the agency engineer.

(h) "Right-of-way" refers to any parcel of land through which a right-of-way has been granted to the agency for any purpose.

(i) All other words and terms relating to municipal officers and matters refer to the corresponding officers of the agency and matters under this act.

SEC. 12. (a) The agency, by ordinance, may fix, on or before August 31 in each calendar year, a water standby or availability charge for any lands to which water is made available by the agency, whether the water is actually used or not. The water standby charge shall be used for ongoing maintenance and operation of the zones of the agency upon which the charge is imposed, as well as for retirement of any bonded indebtedness attributable to that zone

(b) The standby charge for each zone shall not exceed fifteen dollars ($15) per acre per year for each acre of land or fifteen dollars ($15) per year for a parcel less than one acre, unless the standby charge is imposed pursuant to the Uniform Standby Charge Procedures Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) The ordinance fixing a standby charge shall be adopted by the board only after adoption of a resolution setting forth the particular schedule or schedules of charges proposed to be established by ordinance and after notice and hearing. The adoption of the ordinance shall be subject to referendum pursuant to Section 5200 of the Elections Code.

Notice of the hearing shall be given by publication, pursuant to Section 6066 of the Government Code, in a newspaper of general circulation within the agency and by posting on or near the doors of the meeting place of the board or on any official bulletin board customarily used for the purpose of posting of public notices. Publication and posting shall be completed at least seven days prior to the date set for hearing.

(d) The ordinance fixing a standby charge may establish schedules varying the charges according to land uses, water uses, and degree of water availability.

(e) The board shall furnish in writing to the county board of supervisors and the county auditor a description of each parcel of land within the agency upon which a standby charge is to be levied and collected for the current fiscal year, together with the amount of standby charge fixed by the agency on each parcel of land.

(f) The board shall direct that, at the time and in the manner required by law for the levying of taxes for county purposes the board of supervisors shall levy, in addition to any other tax it levies,

the standby charge in the amounts for the respective parcels fixed by the board.

(g) All county officers charged with the duty of collecting taxes shall collect agency standby charges with the regular tax payments to the county. The charges shall be collected in the same form and manner as county taxes are collected. and shall be paid to the agency.

(h) Charges fixed by the agency, including water tolls or charges, shall be a lien on all property against which the charge is imposed or to which the water is delivered. Liens for the charges shall be of the same force and effect as other liens for taxes, and their collection may be enforced by the same means as provided for the enforcement of liens for state and county taxes.

SEC. 13. (a) The agency may fix, on or before August 31 of each year, a water reclamation charge to be imposed on persons who extract water from the Salinas Valley Groundwater Basin or any portion thereof. The charge may be used only to pay for the planning, design, construction, operation, and maintenance of wastewater treatment facilities capable of reclaiming and transporting wastewater for irrigation, groundwater recharge, or other beneficial uses and shall be reasonably related to the benefits received by the property or the impacts caused by the use of property or both.

(b) The reclamation charges imposed shall not exceed the estimated reasonable cost of providing the service or facility for which the charge is imposed. In any ordinance establishing, setting, or revising the reclamation charges, the board shall do all of the following:

(1) Identify the purpose of the charge.

(2) Identify the use to which the charge is to be put, including any public facilities to be financed with the charge.

(3) Estimate the costs to be incurred in connection with the proposed use of the funds.

(4) Indicate how the amount of the charges to be imposed was determined in relation to the estimated costs to be incurred.

(c) The agency may vary the charges among the persons subject thereto and may exclude various classes of persons or areas from payment of the charge, based upon any factor or combination of factors that provides a rational basis for that determination. The ordinance adopting the charges shall include a recital indicating the basis for the differences in the charges or the exclusion of one or more classes or areas from payment of the charge.

(d) The ordinance establishing the charges shall state whether the charges will be collected on the county tax roll or be billed to the diverter.

(e) When collected on the county tax roll, the water reclamation charges levied against property shall be a lien on all property against which the charge is imposed. Liens for the charges shall be of the same force and effect as liens for taxes, and their collection may be enforced by the same means as provided for the enforcement of liens

for state and county taxes.

(f) When the charges are not collected on the county tax roll, the agency shall collect the charges in accordance with procedures adopted by the agency.

SEC. 14. The agency may exercise the right of eminent domain, either within or without the agency, to take any property necessary to carry out any of the objects or purposes of this act. The agency in exercising that power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, or poles of any public utility which is required to be moved to a new location. Nothing in this act shall be deemed to authorize the agency, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal, or ditch from its channel, to the detriment of any person or persons having any interest in that river, creek, stream, irrigation system, canal, or ditch or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

SEC. 15. (a) The Board of Supervisors of Monterey County shall be ex officio the Board of Supervisors of the Monterey County Water Resources Agency. As used in this act the terms "board" and "board of supervisors" mean the Board of Supervisors of the Monterey County Water Resources Agency.

(b) The board may adopt, by ordinance, reasonable procedures, rules, and regulations to implement this act. The board may specify in any ordinance that a violation of the ordinance is an infraction.

(c) All ordinances, resolutions, and other legislative acts for the agency shall be adopted by the board of supervisors, and certified to, recorded, and published in the same manner, except as otherwise expressly provided, as are ordinances, resolutions, or other legislative acts for the County of Monterey.

SEC. 16. The district attorney, county surveyor, county assessor, county tax collector, county auditor, and county treasurer of the County of Monterey, and their successors in office, and all their assistants, deputies, clerks and employees, and all other officers of Monterey County, their assistants, deputies, clerks, and employees, shall be ex officio officers, assistants, deputies, clerks, and employees respectively of the Monterey County Water Resources Agency, and shall respectively perform, unless otherwise provided by the board, the same various duties for the agency as for Monterey County, in order to carry out this act. However, where the county surveyor is a registered civil engineer and is employed by the board of supervisors to supervise the engineering work of the agency, the board may provide for compensation for his or her services payable from the funds of the agency, in addition to his or her salary as county surveyor of Monterey County.

SEC. 17. The board shall have power to make and enforce all needful rules and regulations for the administration and government of the agency, and to appoint and employ all needful agents,

superintendents, engineers, attorneys, and employees to properly look after the performance of any work provided for in this act and to operate and maintain those works, and to perform all other acts necessary or proper to accomplish the purposes of this act. In addition to the officers and employees otherwise prescribed in this act, the board may in its discretion appoint a chairman, a secretary, and any other officers, agents, and employees for the board or the agency as in its judgment may be deemed necessary, prescribe their duties, and fix their compensation. The officers, agents, and employees so appointed shall hold their respective offices or positions at the pleasure of the board.

SEC. 18. The board may by resolution employ competent consultants and employees as may be required to investigate and carefully devise a plan or plans to control the flood and storm waters of the agency, and the zones thereof, and the flood and storm waters of streams that have their sources outside of the agency but which streams and the flood waters thereof flow into the agency, and to conserve those waters for beneficial and useful purposes by spreading, storing, delivering, reclaiming, retaining, or causing to percolate into the soil within or without the agency, or to save or conserve in any manner, any or all of those waters, and to protect the public highways, life, and property within the agency, and the watercourses and watersheds of streams flowing into the agency, from damage relating to those waters; and to obtain other information in regard thereto as may be deemed necessary or useful for carrying out the purposes of this act. The resolution may direct the engineer or engineers to make and file reports from time to time with the board, which shall show all of the following:

(a) A general description of the work proposed to be done, together with general plans, profiles, cross sections, and general specifications relating thereto, on each project or work of improvement.

(b) A general description of the lands, rights-of-way, easements and property proposed to be taken, acquired or injured in carrying out the work.

(c) A map or maps which shall show the location and zones, as may be required, of each of the projects or improvements, and lands rights-of-way, easements, and property to be taken, acquired, or injured in carrying out the work, and any other information in regard to the work or improvements that may be deemed necessary or useful.

(d) An estimate of the cost of each project or work of improvement, including an estimate of the cost of lands, rights-of-way, easements, and property proposed to be taken, acquired, or injured in carrying out the project or work of improvement, and also of all incidental expenses likely to be incurred in connection therewith, including legal, clerical, engineering, superintendence, inspection, printing and advertising, and stating the total amount of bonds, if any, necessary to be issued to pay for

the same.

The engineer or engineers shall from time to time and as directed by the board file with the board supplementary, amendatory, and additional reports and recommendations, as necessity and convenience may require.

The engineer or engineers, employed by the board, shall be authorized, subject to the control and direction of the board, to employ those engineers, surveyors, and others, as may be required for making all surveys or doing any other work necessary for the making of the report.

The board may at any time remove any or all of the engineers or employees appointed or employed under this act, and may fill any vacancies occurring among them from any cause.

SEC. 19. The board shall determine which projects or works of improvement shall be carried out and shall determine, as to each project or work of improvement, that it is one of the following:

(a) For the common benefit of the agency as a whole.

(b) For the common benefit of two or more zones referred to as participating zones.

(c) For the benefit of a single zone.

SEC. 20. (a) The board may institute projects for single zones and joint projects for two or more zones, for the financing, constructing, maintaining, operating, extending, repairing, or otherwise improving any work or improvement of common benefit to that zone or participating zones. For the purpose of acquiring authority to proceed with any project, the board shall adopt a resolution (1) specifying its intention to undertake the project, (2) identifying the proposed zones to be benefited and the percentage of the benefit to be received by each zone, (3) giving the engineering estimates of the cost of the project to be borne by the particular zones or participating zones, (4) fixing a time and place for a public hearing on the resolution, and (5) referring to a map or maps showing the general location and general construction of the project. Notice of the hearing shall be given by publication once a week for two consecutive weeks prior to the hearing, the last publication of which shall be at least seven days before the hearing, in a newspaper of general circulation designated by the board, circulated in the zone or each of the participating zones, if there be such newspaper, and if there be no such newspaper then by posting notice for two consecutive weeks prior to the hearing in five public places designated by the board, in the zone or in each of the participating zones. The notice shall designate a public place in the zone or in each of the participating zones where a copy or copies of the map or maps of the joint project may be seen by any interested person. The map shall be posted in each of the public places so designated in the notice at least two weeks prior to the hearing.

(b) At the time and place fixed for the hearing, or at any time to which the hearing may be continued, the board shall consider all written and oral objections to the proposed project. Upon the

conclusion of the hearing, the board may abandon the proposed project or establish the zones and proceed with the project, unless prior to the conclusion of the hearing sufficient written protests against the proposed project or the designation of the zone or zones or benefits assigned thereto are filed with the board. If the proposed project is one of which at least 12 persons have been registered to vote within the zone or zones for each of the 90 days preceding the hearing, protests will be sufficient if signed by a majority in number of the registered voters residing within the zone or zones. Otherwise, the protests shall be sufficient if signed by the landowners of the zone or zones owning a majority of the acreage within the zone or zones. Each landowner shall be the owner of record, or their authorized representative, and shall have one vote for each acre or portion of an acre of land that he or she owns within the zone or zones. If sufficient written protests are filed, further proceedings relating to the project shall be suspended for not less than six months following the date of the conclusion of the hearing, or the proceeding may be abandoned in the discretion of the board.

SEC. 21. The Legislature finds and determines that the agency is developing a project which will establish a substantial balance between extraction and recharge within the Salinas River Groundwater Basin. For the purpose of preserving that balance, no groundwater from that basin may be exported for any use outside the basin, except that use of water from the basin on any part of Fort Ord shall not be deemed such an export. If any export of water from the basin is attempted, the agency may obtain from the superior court, and the court shall grant, injunctive relief prohibiting that exportation of groundwater.

SEC. 22. If, as a result of appropriate studies conducted by the agency, it is determined by the board that any portion of a groundwater basin underlying the agency is threatened with the loss of a usable water supply as a result of seawater intrusion into that portion of the groundwater basin, the board may take appropriate steps to prevent or deter the further intrusion of underground seawater by establishing and defining an area and depth from which the further extraction of groundwater is prohibited. This determination shall be made only after a public hearing by the board upon the proposed determination, with notice of the hearing to be given in the manner prescribed in Section 6065 of the Government Code. At the hearing, the board shall accept evidence showing the nature and extent of the threat of seawater intrusion and the facilities proposed in order to provide to the area threatened a substitute supply of surface water. If, at the conclusion of the hearing, the board determines that a threat of seawater intrusion exists which will be aggravated by continued groundwater extraction within a given area and depth, the board may adopt an ordinance prohibiting the further extraction of groundwater from the area and depth so defined. The ordinance shall be effective as to any existing groundwater well extracting water from the area and depth prohibited only if there is

made available to the lands served from that well a substitute surface water supply adequate to replace the water supply previously available from that well. The board shall apportion the costs of installation, maintenance, and operation of the facilities required to furnish that substitute surface supply in an equitable manner among all those benefited by the substitute supply, and by the cessation of groundwater extraction, through appropriate standby charges, water tolls, or subsidies.

SEC. 23. The board may impose water tolls or charges for the use of water served directly by the agency from any project developed and operated by the agency pursuant to this act. The board may impose appropriate penalties and interest charges upon delinquent water tolls or charges and shall supply to the county auditor and tax collector on or before the first day of August of each year, a list of all delinquent water tolls or charges. The county tax collector shall collect the delinquent water tolls or charges at the same time and in the same manner as standby or availability charges of the agency imposed under Section 12, except as to water tolls or charges made pursuant to a contract of the agency under subdivision (i) of Section 9.

SEC. 24. The board shall, in any year have the following powers:

(a) To levy ad valorem taxes or assessments upon all property in the agency to pay the general administrative costs and expenses of the agency, and to carry out any of the objects or purposes of this act of common benefit to the agency.

(b) To levy taxes or assessments in each or any of the zones and participating zones to pay the costs and expenses of carrying out, constructing, maintaining operating, extending, repairing, or otherwise improving any or all works or improvements established or to be established within or on behalf of the respective zones, according to the benefits derived or to be derived by the respective zones, by a levy or assessment upon all property within a zone or participating zones, which may include land, improvements thereon, and personal property.

It is declared that for the purposes of any tax or assessment levied under this subdivision, the property so taxed or assessed within a given zone is equally benefited.

(c) To levy taxes or assessments authorized by subdivision (b), in each or any of the zones, according to the special benefits derived or to be derived by the specific properties therein, to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to the zone or zones, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works of improvement established or to be established within or on behalf of the respective zone or zones. The board may by ordinance adopt formulas to determine differential rates within a zone based on special benefits, parcel size, land use, and any other pertinent factor or combination of factors.

(d) No assessment shall be levied pursuant to this act except

following a noticed public hearing. Notice of the hearing shall be published pursuant to Section 6066 of the Government Code. Any owner of real property in any area proposed to be assessed may file a written protest with the agency's secretary at or before the time set for the hearing. Each protest shall contain a description of the lot or parcel in which each signer has an ownership interest, sufficient to allow the agency secretary to determine that the protest is valid. If the signer is not shown on the last assessment roll as the owner of the lot or parcel, the protest shall include written evidence that the signer is the legal owner of the property. The secretary shall endorse on each protest the date of receipt, and at the time of the hearing shall represent to the board all protests filed with the secretary, at the hearing, the board may modify the proposal by either reducing the area proposed to be assessed, reducing the rate of assessment, altering the apportionment of assessments so long as no assessment is increased, or by reducing the total amount of the proposed assessment. If the protests are against the proposed assessment and the board finds that the protests are signed by either the owners of more than 25 percent of the area of the land included within the proposed assessment area, or more than 25 percent of the registered voters, in the proposed assessment area, who voted in the last gubernatorial election, the board may either abandon the proceedings or submit the proposal to the registered voters residing within the proposed assessment area at a general or special election to be held at least 45 days after the date of close of the hearing Any election shall be conducted in accordance with the provisions of the Elections Code applicable to counties. The board may proceed with the levy and collection of the assessments if the proposal is approved by a majority vote of those who vote on the proposal. If the board abandons the proceedings or the proposition fails to win majority voter approval, no further proceedings to levy the proposed assessments shall be undertaken for six months from the date of the election.

(e) In the event of project cooperation with any of the governmental bodies as authorized in subdivision (g) of Section 9, and the making of a contract with any such governmental body, for the purposes set forth in subdivision (g), by the terms of which work is agreed to be performed by any such governmental body in any specified zone or participating zones, for the particular benefit thereof, and by that contract it is agreed that the agency is to pay to that governmental body a sum of money in consideration or subvention for the performance of the work by that governmental body, the board may, after proceedings in the manner prescribed in Section 20, levy and collect a special tax or assessment upon the property in the zone or participating zones, to raise funds to enable the agency to make that payment, in addition to other taxes or assessments otherwise provided for in this act.

(f) The taxes or assessments shall be levied and collected together with, and not separately from, taxes for county purposes, and the

revenues derived from the agency taxes or assessments shall be paid into the county treasury to the credit of the agency, or the respective zones thereof, and the board may control and order the expenditure thereof for those purposes. However, no revenues, or portions thereof, derived in any of the several zones from the taxes or assessments levied under subdivision (b) or subdivision (c) shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any other zone, except in the case of joint projects, or for projects authorized or established outside that zone, or zones, but for the benefit thereof. In cases of projects joint to two or more zones, the zones will become, and shall be referred to as, participating zones.

SEC. 25. The fees and taxes increased or originally imposed by this act shall be subject to the use of the referendum power by the electors of the district, in the manner prescribed by law.

SEC. 26. (a) Whenever the board determines that a bonded indebtedness should be incurred to pay the cost of any work or improvement in any zone or zones, the board may, by resolution, determine and declare the respective amounts of bonds necessary to be issued in each zone or zones, in order to raise the amount of money necessary for each work or improvement and the maximum rate of interest of the bonds. The board shall cause a copy of the resolution, duly certified by the clerk, to be filed for record in the office of the Recorder of Monterey County within five days after its issuance. From and after that filing of the copy of the resolution the board shall be deemed vested with the authority to proceed with the bond election.

(b) After the filing for record of the resolution specified in subdivision (a), the board may call a special bond election in the zone or participating zones at which shall be submitted to the qualified electors of the zone or participating zones the question whether or not bonds shall be issued in the amount or amounts determined in the resolution and for the purpose or purposes therein stated. The bonds and the interest thereon shall be paid from revenue derived from annual taxes or assessments levied as provided in this act.

(c) The board shall call the special bond election by ordinance and not otherwise and submit to the qualified electors of the zone or participating zones, the proposition of incurring a bonded debt in the zone or participating zones in the amount and for the purposes, stated in the resolution and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred It shall be sufficient to give a brief, general description of those objects and purposes, and refer to the recorded copy of the resolution adopted by the board, and on file for particulars. The ordinance shall also state the estimated cost of the proposed work and improvements, the amount of the principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on

the indebtedness and shall fix the date on which the special election shall be held, and the form and contents of the ballot to be used. The rate of interest to be paid on the indebtedness shall not exceed five percent per annum. For the purposes of the election, the board shall, in the ordinance, establish special bond election precincts within the boundaries of each zone and participating zone and may form election precincts by consolidating the precincts established for general elections in the agency to a number not exceeding six general precincts for each special bond election precinct and shall designate a polling place and appoint one inspector, one judge, and one clerk for each of the special bond election precincts.

In all particulars not recited in the ordinance, the special bond election shall be held as nearly as practicable in conformity with the general election laws of the state.

The board shall cause a map or maps to be prepared covering a general description of the work to be done, which shall show the location of the proposed works and improvements and shall cause the map to be posted in a prominent place in the county courthouse for public inspection for at least 30 days before the date fixed for the election.

The ordinance calling the special bond election shall, prior to the date set for the election, be published pursuant to Section 6062 of the Government Code in a newspaper of general circulation, circulated in each zone and participating zone affected. The last publication of the ordinance shall be at least 14 days before the election, and if there be no such newspaper, then the ordinance shall be posted in five public places designated by the board, in each zone and participating zone for at least 30 days before the date fixed for the election. No other notice of the election need be given nor polling place cards be issued.

Any defect or irregularity in the proceeding prior to the calling of the special bond election shall not affect the validity of the bonds authorized by the election. If at the election a majority of the votes cast are in favor of incurring the bonded indebtedness, then bonds for the zone or participating zones for the amount stated in the proceedings shall be issued and sold as in this act provided.

SEC. 27. The board shall, subject to this act, prescribe by resolution the form of the bonds, which shall include a designation of the zone or participating zones affected, and of the interest coupons attached thereto. The bonds shall be payable annually or semiannually at the discretion of the board each and every year on a day and date, and at a place to be fixed by the board, and designated in the bonds, together with the interest on all sums unpaid on that date until the whole of the indebtedness shall have been paid.

The board may divide the principal amount of any issue into two or more series, and fix different dates for the bonds of each series. The bonds of one series may be made payable at different times from those of any other series. The maturity of each series shall comply with this section The board may fix a date, not more than two years

from the date of issuance, for the earliest maturity of each issue or series of bonds. Beginning with the date of the earliest maturity of each issue or series, not less than one-fortieth of the indebtedness of that issue or series shall be paid every year. The final maturity date shall not exceed 40 years from the time of incurring an indebtedness evidenced by each issue or series.

The bonds shall be issued in such denominations as the board may determine, except that no bonds shall be of a less denomination than one hundred dollars ($100), nor of a greater denomination than one thousand dollars ($1,000), and shall be payable on the days and at the place fixed in the bonds, and with interest at the rate specified in the bonds, which rate shall not exceed that specified pursuant to Section 53531 of the Government Code, and shall be made payable annually or semiannually, and the bonds shall be numbered consecutively and shall be signed by the chairman of the board, and countersigned by the auditor of the agency, and the seal of the agency shall be affixed thereto by the clerk of the board. Either or both signatures may be printed, engraved, or lithographed. The interest coupons of the bonds shall be numbered consecutively and signed by the auditor by his or her printed, engraved, or lithographed signature. In case any such officer whose signatures or countersignatures appear on the bonds or coupons shall cease to be that officer before the delivery of the bonds to the purchaser, the bonds and coupons, and signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if that officer had remained in office until the delivery of the bonds.

SEC. 28. The board may issue and sell the bonds of the zones authorized at not less than par value, and the proceeds of the sale of the bonds shall be placed in the treasury of the County of Monterey to the credit of the agency and the respective participating zones thereof, for the uses and purposes of the zone, or zones voting the bonds. The proper record of these transactions shall be placed upon the books of the county treasurer, and the respective zone funds shall be applied exclusively to the purposes and objects mentioned in the ordinance calling the special bond election, subject to the terms of this act. Payments from the zone funds shall be made upon demands prepaid, presented, allowed, and audited in the same manner as demands upon the funds of the County of Monterey.

SEC. 29. Any bonds issued under Section 26 of this act, and the interest thereon, shall be paid from revenue derived from annual taxes or assessments in this act; provided, however, that no zone and no property therein shall be liable for the share of bonded indebtedness of any other zone, nor shall any moneys derived from taxation or assessment in any of the several zones be used in payment of principal or interest or otherwise of the share of bonded indebtedness chargeable to any other zone.

SEC. 30. The board shall levy a tax or assessment each year in the zone or zones of issuance, sufficient to pay the interest and that portion of the principal of the bonds as is due or to become due

before the time for making the next general tax levy. The taxes or assessments shall be levied and collected in the respective zones of issuance together with and not separately from taxes for county purposes, and when collected shall be paid into the county treasury of Monterey County to the credit of the zone of issuance, and be used for the payment of the principal and interest on the bonds, and for no other purpose. The principal and interest on the bonds shall be paid by the County Treasurer of Monterey County in the manner provided by law for the payment of principal and interest on bonds of the county.

SEC. 31. The provisions of law of this state, prescribing the time and manner of levying, assessing, equalizing and collecting county property taxes, including the sale of property for delinquency, and the redemption from that sale, and the duties of the several county officers with respect thereto, are, so far as they are applicable, and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof.

SEC. 32. The bonds of the agency issued for any zone or zones thereof pursuant to this act, shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may by law now or hereafter enacted be invested in bonds of cities, cities and counties, counties, school districts or municipalities in the State of California, the money or funds may be invested in the bonds of the agency issued in accordance with this act, and whenever bonds of cities, cities and counties, counties, school districts, or municipalities, may be used as security for the performance of any act, the bonds of the agency may be so used.

SEC. 33. All bonds issued by the agency under this act shall be free and exempt from all taxation within the state. It is hereby declared that the agency is a local government within the meaning of Section 26 of Article XIII of the California Constitution.

SEC. 34. Any improvement for which bonds are voted under this act, shall be made in conformity with the report, plans, specifications, and map theretofore adopted, as specified in this act, unless the doing of the work described in the report, shall be prohibited by law, or be rendered contrary to the best interests of the agency by some change of conditions in relation thereto, in which event the board of supervisors may order necessary changes made in the proposed work or improvements and may cause any plans and specifications to be made and adopted therefor.

SEC. 35. Whenever bonds have been authorized by any zone or participating zone of the agency and the proceeds of the sale thereof have been expended as authorized in this act, and the board shall by resolution determine that additional bonds should be issued for carrying out the work of flood control, or for any of the purposes of this act, the board may again proceed as provided in this act, and submit to the qualified voters of the zone or participating zones, the

question of issuing additional bonds in the same manner and with like procedure as hereinbefore provided, and all the above provisions of this act for the issuing and sale of the bonds, and for the expenditure of the proceeds thereof, shall be deemed to apply to that issue of additional bonds.

SEC. 36. Should a proposition for issuing bonds for any zone or participating zones submitted at any election under this act fail to receive the requisite number of votes of the qualified electors voting at the election to incur the indebtedness for the purpose specified, the board shall not for six months after the election call or order another election in the zone or participating zone for incurring indebtedness and issuing bonds under the terms of this act for the same objects and purposes.

SEC. 37. The repeal or amendment of this act shall not in any way affect or release any of the property in the agency or in any zone thereof from the obligations of any outstanding bonds or indebtedness until all bonds and outstanding indebtedness have been fully repaid and discharged.

SEC. 38. There is hereby granted to the agency the right-of-way for the location, construction and maintenance of flood control channels, ditches, waterways, conduits, canals, storm dikes, embankments, and protective works in, over, and across public lands of the State of California, not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of those works and adjuncts or for the protection thereof. Whenever any selection of a right-of-way for the works or adjuncts thereto is made by the agency, the board shall transmit to the State Lands Commission, the Controller, and the recorder of the county in which the selected lands are situated, a plat of the lands so selected, giving the extent thereof and the uses for which the same is claimed or desired, duly verified to be correct. If the State Lands Commission shall approve the selections so made it shall endorse its approval upon the plat and issue to the agency a permit to use such right-of-way and lands.

SEC. 39. Any judicial action or proceeding to attack, review, set aside, void, annul, or challenge the validity or legality of the formation of a zone, any contract entered into by the agency or a zone, any bond or evidence of indebtedness of the agency or a zone, or any assessment, rate, or charge of the agency or a zone shall be commenced within 60 days of the effective date thereof.

The action or proceeding shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

The agency may bring an action pursuant to that Chapter 9 to determine the validity of any of the matters referred to in this section.

SEC. 40. Claims for money or damages against the agency shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the

Government Code, except as provided in this act. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to those claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county.

SEC. 41. The legal title to all property acquired under this act shall immediately and by operation of law vest in the agency, and shall be held by the agency, in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. The board is authorized to hold, use, acquire, manage, occupy, and possess, that property, as provided in this act and the board may determine, by resolution duly entered in their minutes, that any property, real or personal, held by the agency is no longer necessary to be retained for the uses and purposes thereof, and may thereafter sell, lease, or otherwise dispose of the property in the manner prescribed by law for counties.

SEC. 42. Employees appointed by the board under this act when required by resolution of the board, shall execute bonds conditioned, executed, approved, filed, and recorded in the general manner and form provided by law for officers, other than supervisors, of the county, before entering upon the duties of their respective employments.

SEC. 43. In addition to any zone amendment pursuant to Section 7, any territory in the agency lying within the watershed within which a zone is situated may be annexed to such zone pursuant to this section. Territory which is in or annexed to one zone may be annexed to such other zone pursuant to this section.

Notwithstanding any other provisions of this act, the following shall apply with respect to the annexation of new territory to any zone:

(a) A petition for annexation by election signed by 25 percent of the freeholders residing in the territory proposed to be annexed as shown by the last equalized assessment roll of the county shall be presented to the board The petition shall designate specifically the boundaries of the territory proposed to be annexed and its assessed valuation as shown by the last equalized assessment roll and shall ask that the territory be annexed to the zone. The petition shall be accompanied by a bond in the sum of not less than one hundred dollars ($100), to be approved by the board and filed with the clerk of the board as security for the payment by the petitioners of the reasonable cost of the election on annexation, in the event that at the election less than a majority of the votes cast are in favor of annexation. The petition shall be verified by the affidavit of one of the petitioners. The petition shall be published by the petitioners for at least two weeks preceding its hearing in a newspaper of general circulation published in the zone, if there is one, or, if not, in a newspaper of general circulation published in the agency, together with a notice stating the number of signers of the petition, the time

when the petition will be presented to the board and that all persons interested may appear and be heard. It shall not be necessary to publish the names of the signers. At the time specified for the hearing, the board shall hear the petition and may adjourn the hearing from time to time. Upon final hearing of the petition, the board, if it approves the petition as originally presented or in a modified form, shall make an order describing the exterior boundaries of the territory proposed to be annexed and ordering that an election be held in such territory for the purpose of determining whether or not the territory shall be annexed to the zone. The order shall fix the day of the election, which shall be within 60 days from the date of the order, and shall show the boundaries of the territory proposed to be annexed to the zone and shall set forth the measure to be submitted to the voters of such territory and shall designate the precincts, polling places, and election officers for such election and state the times between which the polls shall be open. The order shall be published pursuant to Section 6066 of the Government Code. This order shall be entered in the minutes and is conclusive evidence of a due presentation of a proper petition, and of the fact that each of the petitioners was, at the time of the signing and presentation of the petition, qualified to sign. The election shall be held and conducted as provided in Chapter 1 (commencing with Section 22000) of Part 1 of Division 12 of the Elections Code and sample ballots and polling place cards shall be mailed as provided in Section 10012 of the Elections Code. If a majority of the votes in the territory proposed to be annexed at an election called therein by the board for that purpose are in favor of the annexation, the clerk of the board shall make and cause to be entered in the minutes and endorsed on the petition an order approving the petition and the petition shall be filed. The entry is conclusive evidence of the fact and regularity of all prior proceedings of every kind required by law and of the facts stated in the entry. The board at its next regular meeting after the entry shall, by an order, alter the boundaries of the zone and annex to it the territory described in the petition. The order of the board is conclusive evidence of the validity of all prior proceedings leading up to the annexation and recited in the order, and from and after the order the territory is part of the zone. If, at the election, less a majority of the votes in a territory proposed to be annexed are in favor of the annexation of the territory to the zone, the signers of the petition shall, within 10 days after the canvassing of the votes of the election, pay to the board the reasonable cost of the election and, if not paid within 10 days, the board may sue on the bond to recover the cost of the election. If the result of the election is against annexation, the board shall, by order, disapprove the petition and enter the order in its minutes. No other proceeding shall be taken in relation thereto until the expiration of six months from the presentation of the petition, except to collect the costs of the election.

(b) A petition for annexation without election signed by the

owners of real property in the territory proposed to be annexed, which real property represents at least 75 percent of the total assessed valuation of real property in the territory as shown by the last equalized county assessment roll, shall be presented to the board. The petition shall designate specifically the boundaries of the territory and the assessed valuation of real property therein as shown by the last equalized county assessment roll and shall show the amount of real property owned by each of the petitioners and its assessed valuation as shown by the last equalized county assessment roll. The petition shall ask that the territory be annexed to the zone. The petition shall be verified by the affidavit of one of the petitioners. It shall be published by petitioners at least two weeks preceding the hearing in a newspaper of general circulation published in the zone, if there is one, or, if not, in a newspaper of general circulation published in the agency. With the petition there shall be published a notice stating the number of signers of the petition, the time when the petition will be presented to the board and stating that all persons interested may appear and be heard. It shall not be necessary to publish the names of the signers. A printed copy of the petition and notice as so published shall be mailed pursuant to Government Code Sections 53520 to 53523, inclusive. At the time designated the board shall hear the petition and any person interested, and may adjourn the hearing from time to time. Upon the hearing of the petition, the board shall determine whether or not it is for the best interests of the zone and the territory that the territory be annexed to the zone and the board may modify the boundaries of the territory proposed to be annexed as set forth in the petition by decreasing the area of such territory. If the board upon final hearing determines that it is for the best interests of the zone and of the territory proposed to be annexed that the territory be annexed, it shall make an order describing the boundaries of the territory proposed to be annexed and shall alter the boundaries of the zone and annex to it the territory described in the petition and the territory is then a part of the zone.

(c) A petition for annexation without election signed by 100 percent of the owners of real property in the territory proposed to be annexed may be presented to the board. The petition shall designate specifically the boundaries of the territory and shall ask that the territory be annexed to the zone. The petition shall be verified by the affidavit of one of the petitioners. The board shall then determine, upon reviewing the petition, whether or not it is for the best interest of the zone and the territory that the territory be annexed to the zone. The board may modify the boundaries of the territory proposed to be annexed as stated in the petition by decreasing the area of the territory. If the board determines that it is for the best interest of the zone and of the territory proposed to be annexed that the territory be annexed, the board shall make an order describing the boundaries of the territory proposed to be annexed and shall alter the boundaries of the zone and annex to it

the territory described in the petition, and the territory is then a part of the zone.

(d) No petition or request for annexation by any of the above-mentioned methods shall be accepted by the board if a zone annexation petition involving any of the same territory is pending before it for annexation to the same zone.

(e) An order for annexation may be by ordinance or resolution. Whenever any new territory is annexed to a zone, the territory thereupon becomes subject to all the liabilities and entitled to all the benefits of the zone. Any order for annexation may provide for or be made subject to the payment of a fixed or determinable amount of money for the acquisition, transfer, use, or right of use of all or any part of the existing property, real or personal, of the zone. The board may provide that payment of all such amounts shall be either: (1) in lump sums: or (2) in semiannual installments with interest thereon at a rate not to exceed 12 percent over a period not to exceed 10 years beginning on July 1 following the next succeeding March 1, and, in such event, the board shall provide in such ordinance that the total of each such sum to be paid by each parcel shall constitute a lien on such parcel as of noon on the next succeeding March 1, the same as the lien for general agency and zone taxes; that such semiannual installments shall be paid and collected at the same time and in the same manner and by the same persons as, and together with and not separately from, general agency and zone taxes and shall be delinquent at the same time and thereafter subject to the same delinquency penalties; and that all laws applicable to the levy, collection and enforcement of general agency and zone taxes, including, but not limited to, those pertaining to delinquency, correction, cancellation, refund and redemption shall be applicable to such installments.

SEC. 44. The Salinas Valley Water Advisory Commission shall appoint a task force to study the structure and governance of the agency. The task force shall include broad based representation of Monterey County and cities and businesses and agricultural entities represented in the Monterey and Salinas Valley area. The task force shall complete the study and make written recommendations to the Salinas Valley Water Advisory Commission on or before July 1, 1991.

SEC. 45. The board shall appoint a task force to recommend a water allocation formula for the cities and urbanized unincorporated areas in Monterey County that are not within the jurisdiction of the Monterey Peninsula Water Management District. An urban allocation formula is necessary to preserve agricultural access to an adequate water supply and to preserve agriculture as a mainstay of the Salinas Valley economy. The task force shall make the recommendation to the agency on or before January 1, 1992.

SEC 46 This act, and every part thereof, shall be liberally construed to promote the objects thereof, and to carry out its intents and purposes.

SEC. 47. If any provision of this act, or the application thereof to

any person or circumstance, is held invalid, the remainder of the act, or the application of these provisions to other persons or circumstances, shall not be affected thereby.

SEC. 48. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act, and because other costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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. 49. Chapter 699 of the Statutes of 1947 is repealed.

CHAPTER 1160

An act to repeal and add Sections 799.24 and 799.25 of, and to add Section 799.49 to, the Civil Code, relating to recreational vehicles.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 799.24 of the Civil Code is repealed.

SEC. 2. Section 799.24 is added to the Civil Code, to read:

799.24. (a) "Recreational vehicle" means a recreational vehicle as defined in Section 18010 of the Health and Safety Code.

SEC. 3. Section 799.25 of the Civil Code is repealed.

SEC. 4. Section 799.25 is added to the Civil Code, to read:

799.25. "Recreational vehicle park" means a recreational vehicle park as defined in Section 18215 of the Health and Safety Code.

SEC. 5. Section 799.49 is added to the Civil Code, to read:

799.49. At the entry to a recreational vehicle park, or within the separate designated section for recreational vehicles within a mobilehome park, there shall be displayed in plain view on the property a sign indicating that the recreational vehicle may be removed from the premises for the reasons specified in Section 799.22 and containing the telephone number of the local traffic law enforcement agency. Nothing in this section shall prevent a manager or owner of a recreational vehicle park from additionally displaying the sign in other locations within the park.

CHAPTER 1161

An act to amend Sections 5000, 5000.1, 5002, 5003, 5004, 5017, 5018, 5203, 5204, and 5229 of the Education Code, to amend Sections 41, 3702, 3702.5, 23506, 23509, 23509.1, 23509.2, 23520, 23554, and 23556 of, to add Sections 3701.5 and 3702.1 to, the Elections Code, to amend Sections 23702, 23705, 23720, and 23721 of, and to repeal Sections 23703 and 23704 of, the Government Code, and to amend Section 21101 of the Water Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 5000 of the Education Code is amended to read:

5000. (a) After the initial election of governing board members in any school district or community college district, a governing board member election shall be held biennially on the first Tuesday after the first Monday in November of each succeeding odd-numbered year to fill the offices of members whose terms expire on the first Friday in December next succeeding the election. Except as provided in this chapter, or in Chapter 2 (commencing with Section 5200) of this part, the elections shall be held and conducted in accordance with the provisions of Chapter 3 (commencing with Section 5300) of this part.

(b) Notwithstanding any provisions of law to the contrary, a regular election for members of the Long Beach Community College District governing board may be held, upon the adoption of an appropriate resolution by the governing board, on the same date upon which the election for members of the City Board of Education of the Long Beach Unified School District is held pursuant to the City Charter of the City of Long Beach and Article 3 (commencing with Section 5340) of Chapter 3 of this part.

SEC. 2. Section 5000.1 of the Education Code is amended to read:

5000.1. (a) Notwithstanding any provision of law to the contrary the governing board of any school district or community college district in the County of San Diego may adopt a resolution requiring its general district election to be held on the same day as the statewide direct primary election, or the day of the statewide general election.

(b) If an election is held pursuant to subdivision (a), and the election is consolidated with another election, the provisions contained in Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code shall govern the consolidation, and, if the county clerk is requested to conduct the municipal election, Section 22003 of the Elections Code shall be applicable to that election.

(c) If, pursuant to subdivision (a), a general district election is held on the same day as a statewide election, those district officers whose four-year terms of office would have, prior to the adoption of the resolution, expired on the first Friday in December following the general district election in an odd-numbered year shall instead, either continue in their offices until no later than the fourth Tuesday after the day of the general district election or, at the option of the governing board, cease to hold office prior to the expiration of their four year term of office and upon the qualification of their successors at the time prescribed by the governing board.

SEC. 3. Section 5002 of the Education Code is amended to read:

5002. (a) Notwithstanding the provisions of Section 5000, whenever, in a district which has been wholly absorbed into one or more other districts and continues in existence as a district pursuant to Section 4066 until the reorganization in which it has been included is effective for all purposes and a governing board member election is otherwise required to be held prior to such effective date of the reorganization, no such election shall be held. Instead, the county superintendent of schools shall appoint successors to the members whose terms expire on the first Friday in December following the date upon which the election would otherwise have been held. Such appointees shall hold office until the reorganization becomes effective for all purposes.

(b) The provisions of subdivision (a) shall apply to any school district governed by a city board of education whenever such school district has been included with other school district territory within a unification effected pursuant to Chapter 2 (commencing with Section 4200) of Part 3 of this division, where:

(1) The charter of the city involved requires an election of city school district governing board members to be held prior to the date the new unified district becomes effective for all purposes; and

(2) The governing board of the new unified school district is organized to be subject to the provisions of this code rather than the provisions of the city charter.

SEC. 4. Section 5003 of the Education Code is amended to read:

5003. (a) Notwithstanding the provisions of Sections 35105 and 5000, in the case of a unified school district formed in an even-numbered year, where in connection with the formation of which the first governing board was elected in such even-numbered year, all of the members of such first elected governing board shall serve until the first Friday in December of the second succeeding odd-numbered year. Their successors shall be elected at an election conducted on the first Tuesday after the first Monday in November of such second succeeding odd-numbered year. The majority of such successors receiving the highest number of votes shall serve until the first Friday in December of the second odd-numbered year thereafter succeeding. The other members' terms shall expire on the first Friday in December of the first odd-numbered year thereafter succeeding.

(b) Notwithstanding subdivision (a), the governing board of a unified school district formed in an even-numbered year may provide, pursuant to an appropriate resolution adopted by the governing board, that the majority of the members of the governing board who received the highest number of votes in the first election of governing board members for the district shall serve until the first Friday in December of the third odd-numbered year succeeding that first election, and that the other members' terms shall expire on the first Friday in December of the second odd-numbered year succeeding that first election. The resolution described in this subdivision shall be adopted on or before March 15 of the second odd-numbered year succeeding the first election of the governing board.

SEC. 5. Section 5004 of the Education Code is amended to read:

5004. Notwithstanding the provisions of Sections 35105 and 5000 to the contrary, when the first elected board of any newly formed district is elected on the same date that the election is held for adopting the proposal for the formation of the new district and when the terms of several members of the first governing board would expire prior to the date on which the district becomes effective for all purposes, no election shall be held in November of that odd-numbered year, but the several members whose terms expire shall serve until April 30th of the next succeeding even-numbered year. A governing board election shall be held on the second Tuesday in April of that even-numbered year to fill the offices of such members whose terms expire on April 30th next succeeding the election. The terms of office of the members so elected shall expire on the first Friday in December of the second succeeding odd-numbered year. Their successors shall be elected pursuant to Section 5000.

SEC. 6. Section 5017 of the Education Code is amended to read:

5017. (a) Except as provided by Section 5000.5, each person elected at a regular biennial governing board member election shall hold office for a term of four years commencing on the first Friday in December next succeeding his or her election. Any member of the governing board of any school district or community college district whose term has expired shall continue to discharge the duties of the office until his or her successor has qualified. The term of the successor shall begin upon the expiration of the term of his or her predecessor.

(b) Notwithstanding any provisions of law to the contrary, each person elected at a regular election held pursuant to subdivision (b) of Section 5000 shall hold office for a term of four years commencing on the first day of the calendar month next succeeding his or her election The term of his or her predecessor shall be deemed to expire on the first day of the calendar month next succeeding that election, regardless of the length of the term as otherwise established by law, provided, however, that the predecessor shall continue to discharge the duties of the office until his or her successor has

qualified.

SEC. 7. Section 5018 of the Education Code is amended to read:

5018. Any elementary school district having a governing board of three members may, and any elementary school district having a governing board of three members whose average daily attendance during the preceding fiscal year was 300 or more shall, do either of the following:

(a) By its own action determine that the number of members of the governing board shall be increased to five, in which case two additional members shall be elected at an upcoming regular election date, as specified in Section 2500 of the Elections Code, determined by the board.

(b) Request the county superintendent of schools having jurisdiction to submit the question of whether the number of members of the governing board shall be increased to five to the voters of the elementary school district at an upcoming regular election date, as specified in Section 2500 of the Elections Code, determined by the county superintendent of schools. At the same election, two additional members shall be elected to take office if the number of governing board members is increased.

Candidates for the two additional offices shall state in the declarations of candidacy filed for the election that the candidates are candidates for the two additional offices separately from the other offices to be filled in the election and shall clearly indicate to the voters that they may vote for two of the candidates to take office if the voters approve the proposed increase in the number of board members.

If the voters at the election do not approve such an increase in membership of the governing board, the same question may be submitted to the voters at subsequent governing board member elections. Requests to the county superintendent to submit the question to the voters of a district shall be filed with him by the governing board of the district no later than 100 days prior to the election.

If, pursuant to either subdivision (a) or subdivision (b) of this section, two additional governing board members are authorized and elected, the one receiving the higher number of votes shall hold office for a term commencing the first day of the month following the election until the first Friday in December in the second succeeding year following the election in which a regular governing board election is held, and the other one shall hold office for a term commencing the first day of the month following the election until the first Friday in December in the first succeeding year following the election in which a regular governing board election is held. Thereafter the governing board shall be composed of five members elected in the same manner and for the same term as governing boards having five members.

SEC. 8. Section 5203 of the Education Code is amended to read:

5203. If the charter of any city provides for or has within two

years prior to January 1, 1955, provided for a board of educatior five members of a unified school district, and such charter has be or is hereafter amended so that it fails to provide for a board education, a new board of education composed of five members created under this section immediately upon the effective date such amendment; the positions thereto shall be filled by appointment of the county superintendent of schools. The terms of the members first so appointed shall expire the first Friday in December of an odd-numbered year next following the effective date of such charter amendment, and an election shall be held for the members of such board at the time fixed by law for the regular election of members of governing boards of school districts, and the members so elected shall assume office on the first Friday in December following. If the effective date of such charter amendment is such that a legal election for board members cannot be held as aforesaid prior to the first day of December of an odd-numbered year next following such charter amendment, then the county superintendent of schools shall again appoint the members of such board who shall assume office on the first Friday in December as aforesaid. The terms of the board members who take office on the first Friday in December as aforesaid and thereafter shall be as follows:

(a) If such members were elected, the three receiving the largest number of votes shall serve for four-year terms, and the remaining two members shall serve for two-year terms; and all subsequent members shall serve for four-year terms.

(b) If such members were appointed, the county superintendent of schools, upon making the appointments, shall designate three members to serve for four-year terms, and two members to serve for two-year terms.

Except as herein otherwise provided, the members of the board shall be elected at the last time fixed by law for the election of members of governing boards of school districts prior to the commencement of a new term of office. If a general municipal election is to be held within 60 days prior to the time when an election for board members would be held as aforesaid, the board of education may, by resolution filed with the governing body of such city at least 60 days prior to such municipal election, call the school district election to coincide with the municipal election and request the governing body of such city to consolidate such elections in that portion of the school district which lies within such city, and the governing body of such city shall order such elections to be consolidated and to be held as are consolidated elections under the provisions of the Elections Code relating to consolidated elections, in which event the school district shall simultaneously with the holding of such consolidated election conduct an election in any portion of the district not included within such municipality. In the event of the holding of such consolidated election, the school district shall reimburse the city for its proportionate share of the costs of

conducting such consolidated election in an amount to be agreed upon between the governing bodies of such school district and such city.

SEC. 9. Section 5204 of the Education Code is amended to read:

5204. Proceedings pursuant to Section 5203 may be conducted in conjunction with proceedings under Article 1 (commencing with Section 5000) of Chapter 1 of this part, including proceedings by the county committee on school district organization to establish trustee areas or to increase the number of members of the governing board of the school district or community college district from five to seven members, or both. In the event that the number of members of the governing board of the school district is so increased from five to seven members, the terms of office of the board members who take office at the expiration of the terms of office of the board members appointed by the county superintendent of schools shall be determined by lot. The terms of office of the majority of members of the board shall expire on the first Friday in December of the second succeeding odd-numbered year, and the terms of the other members shall expire on the first Friday in December of the first succeeding odd-numbered year. All subsequent members shall serve for four-year terms.

SEC. 10. Section 5229 of the Education Code is amended to read:

5229. If a unified district governed by a board of education of five members includes a chartered city, the charter of which provides for a board of education, the members of which are to be elected pursuant to this code and to hold office for the terms provided by this code, and three members of such board of education were elected to hold office for a term expiring during the school year commencing on the date the district was formed for all purposes, the office of three members of the board of education shall be filled at the first election of governing board members following such date of formation for all purposes.

The term of office of such three members shall be determined by lot. The term of one member shall expire on the first Friday in December of the first succeeding odd-numbered year following his election; and the terms of two members shall expire on the first Friday in December of the second succeeding odd-numbered year following their election. The persons elected to succeed such three members shall hold office for four years.

In a unified school district formed pursuant to Chapter 2 (commencing with Section 4200) of Part 3 of this division which includes a chartered city, the governing board of the district shall be the board of education of such city or city and county; provided, that all qualified electors residing within the unified school district are eligible to vote at all elections held for the election of members of the city board of education and any elector residing in the district, or in a trustee area if the district is divided into trustee areas, is eligible to serve as a member of said board.

In the event a unified district includes a chartered city the

governing board of the unified district shall consist of either five or seven members and shall be elected at large or by trustee areas, as designated by the unification proposal, and any elector residing in the district, or in a trustee area if the district is divided into trustee areas, is eligible to serve as a member of the board. The first governing board of any such unified school district shall be elected in the manner prescribed by Section 35101, except where the charter of the included chartered city expressly provides for the election of the first governing board of a newly formed unified school district, in which case such provisions of the charter shall control the election of the governing board.

SEC. 11. Section 41 of the Elections Code is amended to read:

41. Notwithstanding any other provision of law, whenever any initiative, referendum, recall, nominating petition or paper, or any other petition or paper, is required to be signed by voters of any county, city, school district, or special district subject to petitioning, only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign it. Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained. A space at least one inch wide shall be left blank after each name for the use of the clerk in verifying the petition or paper. The part of a petition for the voters' signatures, printed names, and residence addresses and for the blank spaces for verification purposes shall be numbered consecutively commencing with the number one and continuing through the number of signature spaces allotted to each section. The petition format shall be substantially in the following form:

			Official Use Only
1.	(Print Name)	(Residence Address ONLY)	
	(Signature)	(City)	
2.	(Print Name)	(Residence Address ONLY)	
	(Signature)	(City)	

SEC. 12. Section 3701.5 is added to the Elections Code, to read:

3701.5. Any proposal to enact, amend, or otherwise revise a county charter by initiative petition may be submitted to the board of supervisors and shall be subject to the provisions of this article. However, nothing in this article shall be construed to allow a board of supervisors to enact, amend, or otherwise revise a county charter without submitting the proposal to the voters.

SEC. 13. Section 3702 of the Elections Code is amended to read:

3702. (a) Before circulating any initiative petition in a county, or any petition relating to the annexation of territory by a county, the consolidation of counties, or the dissolution of a county, its proponents shall file with the clerk a notice of intention to do so. The notice shall include the names and business or residence addresses of at least one but not more than five proponents of the petition, and shall be accompanied by the written text of the initiative and a request that a ballot title and summary be prepared.

(b) Any person filing a notice of intent with the county clerk shall pay a fee to be established by the board of supervisors not to exceed two hundred dollars ($200) to be refunded to the filer if, within one year of the date of filing the notice of intent, the county clerk certifies the sufficiency of the petition.

SEC. 14. Section 3702.1 is added to the Elections Code, to read:

3702.1. The notice of intention shall contain the printed name, signature, and business or residence address of at least one but not more than five proponents and may include a printed statement, not exceeding 500 words in length, stating the reasons for the proposed petition. The notice shall be in substantially the following form:

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of _____ for the purpose of _____. A statement of the reasons of the proposed action as contemplated in the petition is as follows: (optional statement).

SEC. 15. Section 3702.5 of the Elections Code is amended to read:

3702.5. (a) The county clerk shall immediately transmit a copy of any proposed measure to the county counsel. Within 15 days after the proposed measure is filed, the county counsel shall provide and return to the county clerk a ballot title and summary for the proposed measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the county counsel shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.

(b) The county clerk shall furnish a copy of the ballot title and summary to the proponents of the proposed measure. The proponents shall, prior to the circulation of the petition, publish the Notice of Intention, and the ballot title and summary of the proposed measure in a newspaper of general circulation published in that county, and file proof of publication with the clerk.

(c) The ballot title and summary prepared by the county counsel shall appear upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 12-point. The ballot title and summary shall be clearly separated from the text of the measure.

The heading of the proposed measure shall be in substantially the following form:

Initiative Measure To Be Submitted Directly to the Voters

The county counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the county counsel. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

SEC. 16. Section 23506 of the Elections Code is amended to read:

23506. The terms of office of elective officers in all new districts shall be determined as follows:

(a) If the district is formed in an odd-numbered year, the officers elected at the formation election shall hold office until noon on the first Friday in December of the next following odd-numbered year,

provided officers elected at an election held on the first Tuesday after the first Monday in November shall hold office as provided in subdivision (c).

(b) If the district is formed in an even-numbered year, the officers elected at the formation election shall hold office until noon on the first Friday in December of the second next following odd-numbered year.

(c) The directors elected at the first general district election held in a district and at a formation election held at the same time as the general district election shall meet as soon as practicable after taking office and classify themselves by lot into two classes, as nearly equal in number as possible, and 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. All other elective officers elected at such election shall hold office for a term of four years or until their successor is elected and qualifies.

SEC. 17. Section 23509 of the Elections Code is amended to read:

23509. Unless the principal act of a district provides that an election shall be held on one of the other dates specified in Chapter 1 (commencing with Section 2500) of Division 3, a general district election shall be held in each district on the first Tuesday after the first Monday in November in each odd-numbered year to choose a successor for each elective officer the term of whose office will expire on the following first Friday in December.

SEC. 18. Section 23509.1 of the Elections Code is amended to read:

23509.1. (a) Notwithstanding any other provision of law to the contrary, a governing board in the County of San Diego may adopt a resolution requiring its general district election to be held on the same day as the statewide direct primary election or the day of the statewide general election.

(b) If an election is held pursuant to subdivision (a), and the election is consolidated with another election, the provisions contained in Part 2.5 (commencing with Section 23300) shall govern the consolidation and, if the county clerk is requested to conduct the election, Section 22003 shall apply to that election.

(c) If, pursuant to subdivision (a), a general district election is held on the same day as a statewide election, those officers whose four-year terms of office would have, prior to the adoption of the resolution, expired on the first Friday in December following the general district election in an odd-numbered year shall, instead, either continue in their offices until no later than the fourth Tuesday after the day of the general district election or, at the option of the governing board, cease to hold office prior to the expiration of their four-year term and upon the qualification of their successors at the time prescribed by the governing board.

SEC. 19. Section 23509.2 of the Elections Code is amended to read:

23509.2. (a) Notwithstanding any other provision of law, the

governing board of the Marina County Water District in the County of Monterey may adopt a resolution requiring its general district election to be held on the same day as the statewide direct primary election or the day of the statewide general election.

(b) If an election is held pursuant to subdivision (a), and the election is consolidated with another election, the provisions contained in Part 2.5 (commencing with Section 23300) shall govern the consolidation, and, if the county clerk is requested to conduct the election, Section 22003 shall apply to that election.

(c) If, pursuant to subdivision (a), a general district election is held on the same day as a statewide election, those officers whose four-year terms of office would have, prior to the adoption of the resolution, expired on the first Friday in December following the general district election in an odd-numbered year shall, instead, either continue in their offices until no later than the fourth Tuesday after the day of the general district election or, at the option of the governing board, cease to hold office prior to the expiration of their four-year term and upon the qualification of their successors at the time prescribed by the governing board.

SEC. 20. Section 23520 of the Elections Code is amended to read:

23520. If, by 5 p.m. on the 83rd day prior to the day fixed for the general district election (a) only one person has filed a declaration of candidacy for any elective office to be filled at that election or (b) no one has filed a declaration of candidacy for such an office or (c) in the case of directors to be elected from the district at large, the number of persons who have filed a declaration of candidacy for director at large does not exceed the number of offices of director at large to be filled at that election or (d) in the case of directors who must reside in a division but be elected at large, the number of candidates for director at large from a division does not exceed the number required to be elected director at large while residing in that division; and, if a petition signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or division if elected by division, requesting that the general district election be held has not been presented to the officer conducting the election, he or she shall submit a certificate of these facts to the supervising authority and request that the supervising authority, at a regular or special meeting held prior to the Monday before the first Friday in December in which the election is held, appoint to such office or offices the person or persons, if any, who have filed declarations of candidacy. The supervising authority shall make such appointments. If no person has filed a declaration of candidacy for any office, the supervising authority shall appoint any person to the office who is qualified on the date when the election would have been held. The person appointed shall qualify and take office and serve exactly as if elected at a general district election for such office.

Where a director must be appointed to represent a division, all or most of which is not within the county governed by the supervising authority, then the board of supervisors of the county within which

all or most of that division is located shall be the body to which request for appointment is made and which shall make such appointment.

SEC. 21. Section 23554 of the Elections Code is amended to read:

23554. No later than the Monday before the first Friday in December the county clerk shall declare the elected candidate or candidates. If there is but one person to be elected to an elective office, the candidate receiving the highest number of votes cast for the candidates for that office shall be declared elected. If there are two or more persons to be elected to an elective office, those candidates equal in number to the number to be elected who receive the highest number of votes for the office shall be declared elected.

If a tie vote makes it impossible to determine which of two or more candidates has been elected, the county clerk shall notify the governing body of the district thereof and such governing body shall forthwith notify the candidates who have received the tie votes to appear before it either personally or by representative at a time and place designated by the governing body. The governing body shall at that time and place determine the tie by lot and the results thereof shall be declared by the governing body. The candidate so chosen shall qualify, take office and serve as though elected at the preceding general district election.

SEC. 22. Section 23556 of the Elections Code is amended to read:

23556. Elective officers, elected or appointed pursuant to the provisions of this part, take office at noon on the first Friday in December next following the general district election.

Prior to taking office, each elective officer shall take the official oath and execute such bond as may be required by the principal act.

SEC. 23. Section 23702 of the Government Code is amended to read:

23702. Petitions to propose or revise a charter shall be subject to the provisions of Article 1 (commencing with Section 3700) of Chapter 2 of Division 5 of the Elections Code.

SEC. 24. Section 23703 of the Government Code is repealed.

SEC. 25. Section 23704 of the Government Code is repealed.

SEC. 26. Section 23705 of the Government Code is amended to read:

23705. Upon the adoption of such ordinance, or the presentation of such petition, the governing body shall order the holding of a special election for the purpose of electing a charter commission, which special election shall be held on the next established election date not less than 88 days after the adoption of the ordinance or the presentation of the petition to the governing body.

SEC. 27. Section 23720 of the Government Code is amended to read:

23720. (a) A county charter may be amended by proposals submitted by the governing body or by a petition signed by 10 percent of the qualified electors of the county, computed upon the total number of votes cast in the county for all candidates for

Governor at the last general election at which a Governor was elected, filed in the office of the county clerk of the county, petitioning the governing body to submit a proposed amendment or amendments to the charter of the county to the qualified electors of the county, which amendment or amendments are set forth in full in such petition.

(b) A county charter may be repealed by proposals submitted by the governing body or by a petition signed by 10 percent of the qualified electors of the county computed upon the total number of votes cast in the county for all candidates for Governor at the last general election at which a Governor was elected. Such petition, petitioning the governing body to submit the question of charter repeal to the qualified electors of the county, shall be filed in the office of the county clerk of the county.

(c) Petitions to amend or repeal a county charter shall be subject to the provisions of Article 1 (commencing with Section 3700) of Chapter 2 of Division 5 of the Elections Code.

SEC. 28. Section 23721 of the Government Code is amended to read:

23721. The petition shall forthwith be examined and certified by the county clerk as provided in Article 1 (commencing with Section 3700) of Chapter 2 of Division 5 of the Elections Code.

SEC. 29. Section 21101 of the Water Code is amended to read:

21101. Notwithstanding Sections 23506 and 23556 of the Elections Code, elective officers, irrespective of the method of their selection, take office as soon as they qualify, except that officers elected at a general district election take office at noon on the first Friday in December next following the general district election.

SEC. 30. (a) Notwithstanding Sections 3525, 3528, 3529, 3560, 3578, 10218, and 10302.5 of the Elections Code or any other provisions of law, Senate Constitutional Amendment 47 of the 1989–90 Regular Session shall be submitted to the voters at the November 6, 1990, general election.

(b) The Secretary of State shall ensure the placement of Senate Constitutional Amendment 47 of the 1989–90 Regular Session on the November 6, 1990, general election ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for Senate Constitutional Amendment 47 of the 1989–90 Regular Session as expeditiously as possible, but not later than two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of Senate Constitutional Amendment 47 of the 1989–90 Regular Session as expeditiously as possible, but not later than five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of the Elections Code regarding Senate Constitutional Amendment 47 of the 1989–90 Regular Session.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding that constitutional amendment to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of the Elections Code, be mailed at least 14 days before the election.

(f) (1) Notwithstanding any other provision of law, all ballots of the election shall have printed thereon, in a square, the words: "Amendment of subdivision (d) of, and addition of subdivision (e) to, Section 8 of Article II of the California Constitution." In the same square, below the words, all ballots shall contain the following words in 8-point type: "This act establishes specific requirements for compliance with single-subject restrictions upon initiative measures and also provides that in specified election years initiative measures shall only be submitted at the June primary or November general election." Opposite the square, there shall be spaces left in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the measure.

Where voting is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section that Senate Constitutional Amendment 47 of the 1989–90 Regular Session be properly placed before, and duly considered by, the voters at the November 6, 1990, general election, the use of the voting machines are in compliance with this section.

SEC. 31. 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. 32. 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 promptly implement reforms and necessary improvements with respect to initiatives and elections, it is necessary that this act take immediate effect.

CHAPTER 1162

An act to add Section 68515 to the Government Code, relating to courts, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990]

I am deleting the $80,000 appropriation contained in Section 3 of Senate Bill No. 2063

This bill would require the Judicial Council to study the establishment of one to three state megatrial facilities and report to the Legislature on its findings and recommendations by December 1, 1992. This bill appropriates $80,000 from the General Fund to implement this bill

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 1990, more than $54 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 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No 2063

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. It is the intent of the Legislature to find the most economical and practical means of handling those especially large court cases with such extraordinary numbers of parties and counsel that they cannot be accommodated in existing facilities; and to determine whether construction of a few megatrial facilities would meet the need for such facilities, and whether there is enough demand to utilize the facilities year round, either for these cases or for other public purposes.

SEC. 2. Section 68515 is added to the Government Code, to read:

68515. (a) The Judicial Council, in consultation with the Department of General Services and the State Architect, shall study the feasibility of the operation of one to three megatrial facilities for cases which have extraordinary numbers of parties and counsel. The study shall include, but shall not be limited to, all of the following:

(1) Alternative uses for the proposed facilities when not in use for megatrials, including suggestions regarding alternate construction styles which could maximize alternate uses.

(2) The types of support facilities that would be needed for such a megatrial facility, such as a library, child care facilities, or offices.

(3) A cost comparison of using existing facilities, renting facilities on a case-by-case basis, constructing temporary facilities and dismantling them after use, and constructing permanent facilities and encouraging their maximum usage.

(4) The number of cases which would make such a facility feasible and the frequency, jurisdiction, and location of these cases.

(5) Data on megatrials for the past 10 years, to include, but not be limited to, associated costs, duration, number of litigants and witnesses, and location.

(6) The options for bringing judges and juries from the original jurisdiction for megatrial or using those located near the facility.

(7) If existing megatrial facilities are not recommended for continued use, then the reasons for using alternative sites shall be specified.

(b) The Judicial Council shall report its findings and recommendations to the Legislature on or before December 1, 1992.

(c) Any permanent facility that is existing or proposed and studied under this proposal shall be deemed economical and practical to the extent that:

(1) Construction and operational costs are less than those of temporary facilities by 15 percent or more.

(2) The facilities would be utilized no less than 70 percent of the year.

SEC. 3. There is hereby appropriated from the General Fund to the Judicial Council the sum of eighty thousand dollars ($80,000) for the purposes of this act.

CHAPTER 1163

An act to add Chapter 4.5 (commencing with Section 24450) to Division 20 of the Health and Safety Code, relating to playgrounds, and making an appropriation therefor.

[Approved by Governor September 20, 1990 Filed with Secretary of State September 21, 1990.]

I am deleting the $75,000 appropriation contained in Section 3 of Senate Bill No. 2733.

This bill would appropriate $75,000 to the Department of Health Services (DHS) from the General Fund and would require the DHS, in consultation with various agencies, to adopt regulations by January 1, 1992, governing the design, installation, and maintenance of playgrounds.

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 1990, more than $54 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 1991–92. Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Senate Bill No 2733.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The Legislature finds and declares all of the

following:

(a) Nationwide, at least 15 children were killed and 192,000 injured in 1988 in playground accidents, including three children aged three and four killed in Los Angeles and Orange Counties.

(b) The proper design, installation, inspection, maintenance, and supervision of playgrounds would prevent many costly injuries and deaths in California.

(c) California has fallen behind other states and the federal government in providing guidelines and other support for safe playgrounds, which develop skill and confidence in children without imposing undue risks.

(d) Generally applicable standards for public playgrounds are needed to protect children and to stem the increasing exposure of public and private resources to lawsuits.

(e) It is the intent of the Legislature in enacting this chapter to encourage playground safety, and to prevent costly accidents by requiring regulations which, as accurately as possible, approximate the standard of care applicable to playground operators. It is expected that these regulations will improve the conditions in those playgrounds that are not properly designed, built, maintained, or supervised by warning of safety risks, and will simplify the task of building safe playgrounds in the future. It is not the intent of the Legislature that these regulations shall serve either to shield against liability or to create liability for a playground operator.

SEC. 2. Chapter 4.5 (commencing with Section 24450) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 4.5. PLAYGROUND SAFETY

24450. On or before January 1, 1992, the state department, in consultation with the office of the State Architect, the California Parks and Recreation Society, the League of California Cities, the Department of Parks and Recreation, the State Department of Education, and the California Council of the American Society of Landscape Architects, shall adopt regulations for the design, installation, inspection, maintenance, and supervision where appropriate, and training of personnel involved in the design, installation, and maintenance, of all playgrounds either operated by public agencies, including a state agency, city, county, city and county, school district, and any other district, or operated by any entity where the playground is open to the public. Those regulations shall meet the standard of care imposed by courts of law on playground operators, and shall, at a minimum, impose guidelines and criteria which shall be at least as protective as the guidelines in the Handbook for Public Playground Safety produced by the United States Consumer Products Safety Commission, shall give due consideration to any successor to the Handbook for Public Playground Safety which may be published, and shall include more protective requirements where the state department finds those

guidelines will provide inadequate protection. The regulations shall include special provisions for playgrounds in day care settings, which shall be developed in consultation with the State Department of Social Services and the California Children's Lobby, and which shall be appropriate for children within the range of ages in day care settings. The state department shall not be responsible for enforcement of any regulations pursuant to this section.

24451. All public agencies operating playgrounds, including a state agency, city, county, city and county, and district, shall upgrade their playgrounds by replacement or improvement as necessary to satisfy the regulations adopted pursuant to Section 24450 to the extent state funds are made available specifically for that purpose through state bonds or other means. All other entities operating playgrounds open to the public shall upgrade their playgrounds by replacement or improvement, as necessary to satisfy the regulations adopted pursuant to Section 24450, on or before January 1, 2000. This section shall not affect the liability or absence of liability of playground operators.

24452. For purposes of this chapter, all of the following shall apply:

(a) An "entity operating a playground open to the public" shall include, but not be limited to, a church, subdivision, hotel, motel, resort, camp, office, hospital, shopping center, day care setting, and restaurant.

(b) "Playground" shall refer to an improved outdoor area designed, equipped, and set aside for children's play which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

(c) "Supervision" shall include all general and specific supervision necessary to protect children from unreasonable risk of harm from site hazards, the acts of other children, or the use of the playground in a way that was not intended by the designer or manager of the playground. The regulations required pursuant to this chapter shall not expand on the periods or circumstances when supervision shall be provided beyond the periods or circumstances already determined to be within the existing standard of care to which a playground operator is held.

24453. Regulations adopted pursuant to this chapter shall include special provisions where appropriate, as determined by the state department, for the needs of the developmentally disabled in state institutions, pursuant to Division 4.1 (commencing with Section 4400) of, and Division 4.5 (commencing with Section 4500) of, the Welfare and Institutions Code, and in community care facilities, and other public and private institutions that provide residential or day care specifically for the developmentally disabled.

24454. (a) After the effective date of the regulations adopted pursuant to this chapter, no state funding shall be available for the planning, development, or redevelopment of any playground, unless

the playground, after completion of the state-funded project, will conform to the applicable regulations adopted pursuant to this chapter. However, where state funds have been appropriated to, or allocated for, a playground project prior to the effective date of the regulations but the regulations become effective prior to the completion of the project, that funding shall be maintained, as long as the playground is altered to conform to the regulations to the extent the alterations can be made without adding significantly to the project cost.

(b) After the date by which an entity is required to conform its playground to satisfy regulations adopted pursuant to this chapter, no state funding shall be available for the operation, maintenance, or supervision of the playground unless the playground conforms to the applicable regulations adopted pursuant to this chapter.

24455. All new playgrounds open to the public built by a public agency or any other entity more than six months after the effective date of the regulations adopted pursuant to this chapter shall conform to the requirements of those regulations. Where the playground developer knows of the regulations before undertaking any expenses related to designing or building the playground, this six-month grace period shall not apply.

SEC. 3. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the State Department of Health Services for the purposes of adopting the regulations required by Chapter 4.5 (commencing with Section 24450) of Division 20 of the Health and Safety Code.

CHAPTER 1164

An act relating to geologic hazards, and making an appropriation therefor.

[Approved by Governor September 20, 1990. Filed with Secretary of State September 21, 1990]

I am deleting the $50,000 appropriation contained in Section 2 of Senate Bill No. 2792.

This bill would appropriate $50,000 from the General Fund to the Department of Conservation to initiate an earthquake planning scenario to assist the United States Geological Survey in studying the Rodgers Creek Fault and recommending plans to prepare for seismic activity. These funds would be contingent on the availability of $250,000 in matching funds.

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 1990, more than $54 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 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Senate Bill No. 2792.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The Legislature finds and declares the following:

(a) The Rodgers Creek Fault lies 20 miles north of San Francisco.

(b) United States Geological Survey geologists have discovered evidence which indicates that there have been earthquakes measuring around 7.0 on the Richter scale, on this fault in the past and that there is a possibility that there could be a serious earthquake on this fault in the future.

(c) The United States Geological Survey plans to conduct studies of this fault in the near future.

SEC. 2. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Department of Conservation for expenditure for initiating an earthquake planning scenario to assist the United States Geological Survey in studying Rodgers Creek Fault and recommending plans to prepare for future seismic activity, provided that matching funds in the amount of two hundred fifty thousand dollars ($250,000) are available to the department for the purposes of this act.

CHAPTER 1165

An act to add Chapter 4.5 (commencing with Section 5000) to Part 1 of Division 2 of the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 21, 1990.]

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

SECTION 1. Chapter 4.5 (commencing with Section 5000) is added to Part 1 of Division 2 of the Insurance Code, to read:

CHAPTER 4.5. CALIFORNIA RESIDENTIAL EARTHQUAKE RECOVERY FUND

Article 1. General Provisions

5000. This chapter shall be known and may be cited as the Green, Hill, Areias, Farr California Residential Earthquake Recovery Act.

5001. As used in this chapter:

(a) "Commissioner" means the Insurance Commissioner.

(b) "Fund" means the California Residential Earthquake Recovery Fund.

(c) "Residential property" means privately owned single-family residential structures, individually owned condominium units, or individually owned mobilehomes located in this state and used primarily for residential purposes. It does not include real property or its contents used for any commercial, industrial, or business purpose, except a single-family structure rented for individual residential purposes. It does not include property owned by any public entity. It does not include property being financed under the Veterans' Farm and Home Purchase Act of 1943 or the Veterans' Farm and Home Purchase Act of 1974, commonly known as the Cal-Vet Farm and Home Loan Program.

(d) "Residential property insurance" means insurance covering the loss, destruction, or damage of residential property. It includes policies purchased by an association of condominium owners covering against the loss, destruction, or damage of residential units. It does not include insurance covering contents or personal property.

5002. (a) There is hereby created the California Residential Earthquake Recovery Fund, which is a special fund which, notwithstanding Section 13340 of the Government Code, is continuously appropriated for the purposes of this chapter. The fund shall be administered by the commissioner.

(b) The purpose of the fund shall be to provide payments for structural damage caused by earthquakes to California residential real property.

(c) Money in the fund shall be used exclusively for the following purposes:

(1) Payment for structural damages to residential property caused by earthquakes as provided by this chapter.

(2) Payment of expenses of administering this chapter. Expenses of administering this chapter shall be paid only from the fund.

(3) Payment of expenses of insurers for other persons or entities incurred in connection with the adjustment of claims under this chapter.

(4) The purchase of reinsurance where authorized by this chapter.

(5) The expenses of issuance and the repayment of revenue bonds that may be authorized for the purposes of this chapter.

(6) The reduction of earthquake hazards by retrofitting dwellings pursuant to Section 5001.5.

(d) Money in the fund shall be invested and reinvested as part of the Pooled Money Investment Account, however the fund and its interest shall not be available for transfers pursuant to Section 16310 of the Government Code.

5002.5. For purposes of paragraph (6) of subdivision (c) of Section 5001, when an initial threshold of one billion dollars surplus in the fund is attained, 2 percent of the moneys above one billion dollars shall be made available for the issuance of low-interest loans to individuals who have residential property insurance in force for the purpose of retrofitting covered structures to withstand or reduce

earthquake damage or hazards. A four percent authorization shall become available for this purpose when the fund surplus reaches two billion dollars, and a five percent authorization shall become available when the fund surplus reaches three billion dollars.

5003. (a) Every insured shall at the time of paying the premium for the policy of residential property insurance on property located within the state, pay the earthquake surcharge established by the commissioner. Every insurer shall, at the time of collecting such premium, collect this surcharge.

(b) Every insurer shall, at the time of collecting the premium for the policy of residential property insurance on property located within the state, collect, along with the earthquake surcharge, an appropriate fee to recover the cost of the insurers', agents', and brokers' administrative expenses for collecting the surcharge. The fee for the costs shall be filed with the commissioner, and shall be deemed approved unless it is disapproved within 30 days of submission. In the first year of the program, in no event shall the fee exceed one dollar ($1). On July 1, 1992, an insurer may submit to the commissioner a request for approval of a fee to recover the insurer's administrative costs. The fee that may be charged after the first year shall not be subject to the one dollar ($1) limit but in no event shall exceed the cost of the insurer's administrative expenses.

(c) The surcharge shall be transmitted to the Treasurer within 30 days of the end of the quarter within which the surcharge was collected. These surcharges shall be held in a segregated, interest-bearing account on behalf of the fund with all the accrued interest being remitted to the fund on a quarterly basis, but in no event more than 30 days after the end of the quarter. The Treasurer shall deposit the remitted funds into the fund. The insurer shall transmit to the commissioner the name of the person from whom the surcharge is collected, the names of the insureds who have failed to pay, and other relevant information required by the commissioner. The insurer shall retain the fee collected under subdivision (b) for its administration.

(d) Every residence for which the surcharge is collected shall be provided payments as provided by this chapter in the event of earthquake damage to the residence.

(e) An insurer's obligations under an insurance contract shall not be limited or abrogated by an insured's failure to pay the surcharge.

5004. (a) The commissioner shall establish the surcharge to be collected pursuant to Section 5003. The surcharge shall be established as follows:

(1) The commissioner shall provide for different surcharges for different risks based upon the earthquake risk for the location and the risk presented by the type and age of the residential property. The commissioner may establish a reduced surcharge for residential property specifically designed or retrofitted to withstand earthquake damage provided that the reduction is based on evidence of identifiable and achievable retrofit procedures which reduce the

cost of loss from seismic activity.

(2) Except as provided by subdivision (c), the surcharge for a single residence shall not be lower than twelve dollars ($12) or higher than sixty dollars ($60).

(3) The commissioner may adjust the surcharge annually to reflect extraordinary changes in the risk, temporarily or extraordinarily changes in the condition of the fund, and changes in residential construction costs. However, no annual increase may be made under this paragraph in excess of the increase in the Engineering News Record construction cost index.

(b) The commissioner shall immediately report to the policy committees of the Legislature with jurisdiction over insurance and to the Joint Legislative Budget Committee upon establishing or increasing the surcharge or fee as authorized by this section.

5004. (a) The fund shall make payment for structural damages as provided in this chapter to owners of residential property located within the state other than for losses caused by fire, subject to the following limits:

(1) Payment for structural damage is limited to a maximum of fifteen thousand dollars ($15,000) per occurrence.

(2) The payments shall be subject to a deductible equal to one-half of 1 percent of the amount of fire coverage as stated in the policy of residential property insurance, or, if there is no stated amount per unit of residential property, then the fair market value of the residence, excluding land value, but in no case less than one thousand dollars ($1,000), and in no case more than three thousand five hundred dollars ($3,500).

(b) The amount established by subdivision (a) shall be adjusted annually by the commissioner to reflect changes in the construction cost for residential structures.

(b) Except as provided by subdivision (a) of Section 5008, payments from the fund shall apply only for property for which the surcharge was collected. The property shall remain eligible for payments for the period for which the underlying residential property insurance is in effect.

(d) The fund shall not make payments to the extent that any loss or damage is covered by any privately purchased policy of insurance. Insurers may submit earthquake insurance rating plans which include deductibles varying in relation to insured values and payments provided under this chapter.

5006. (a) The commissioner may contract with insurers or other persons or entities for the provision of adjustment services. Any person or entity that provides adjustment services shall submit its recommendations to the commissioner, and any payment made on the claim shall be paid by the fund to the claimant.

(b) The commissioner may use a portion of the fund to purchase reinsurance.

5005.1. Notwithstanding Section 5005, the dollar amount limitation on maximum payments from the fund shall be increased,

subject to the conditions set forth below, as follows:

(a) If, after January 1, 1994, the fund contains at least seven hundred fifty million dollars ($750,000,000), the limitation shall be increased by four thousand dollars ($4,000) over the amount which is in effect at that time.

(b) If, after January 1, 1996, the fund contains at least one billion two hundred fifty million dollars ($1,250,000,000), the limitation shall be increased by an additional five thousand dollars ($5,000) over the amount which is in effect at that time.

5005.2. Notwithstanding any other provision in this chapter, the fund shall provide payments, subject to the conditions set forth below, as follows:

(a) If the dollar amount limitation on maximum payments from the fund is increased pursuant to subdivision (a) of Section 5005.1, the fund shall also provide payments of up to one thousand dollars ($1,000) to cover expenses while the residential dwelling remains uninhabitable due to physical loss or damage from an earthquake;

(b) If the dollar amount limitation on maximum payments from the fund is increased pursuant to subdivision (b) of Section 5005.1, the fund shall provide, in addition to the payments provided for by subdivision (a), payments of up to two thousand dollars ($2,000) for the purpose of reconstruction costs required to bring the residential dwelling on the residential property up to required current local residential dwelling building code standards as required by the local entity as part of the approval of the reconstruction permit process after an earthquake.

5007. The state and the commissioner shall not be liable for any payments in excess of the amount of money in the fund. Insurers collecting the earthquake surcharge shall bear no risk and shall assume no liability for payments made by the fund, including any pro rata distribution. In the event that an earthquake exhausts the money in the fund, including any money that may be deposited into the fund from the sale of revenue bonds, and any applicable reinsurance, the money in the fund shall be allocated to all claimants on a pro rata basis, in proportion to the amount of the claim that would have been paid if sufficient funds were available. If it appears that the fund will be exhausted, the commissioner shall immediately inform the Legislature, and shall report the amount of revenue bonds required to be authorized to meet the obligations of the fund. The fund shall not be a member of the California Insurance Guarantee Association established by Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

5008. (a) This chapter shall apply to every policy of residential property insurance issued or renewed on or after July 1, 1991, insuring residential property in the state, for losses arising from earthquakes occurring on or after July 1, 1991.

(b) Notwithstanding subdivision (a), payments shall be provided by the fund to owners of residential property located in the state if the residential insurance policy was in effect on July 1, 1991, and the

next time for collection of premiums within the meaning of subdivision (a) of Section 5003 has not occurred.

(c) The surcharge and fee imposed by this chapter shall not be subject to the gross premiums tax and are not premiums for any other purpose, including the payment of commissions.

5009. (a) The commissioner shall promulgate a notice to be given to every insured to whom this chapter may be applicable.

(b) The notice shall describe the reason for the surcharge, the scope of payments available from the fund provided, and applicable limitations.

5010. The commissioner shall adopt regulations to implement this chapter no later than April 1, 1991. The regulations shall include, at the minimum, procedures for adjustment of claims and for appeal of the determination of the claim adjustment process. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of 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.

5011. The Legislature recognizes that the California Residential Earthquake Recovery Fund is not a substitute for the purchase of private earthquake insurance. It is the Legislature's intent that the fund make purchase of private insurance more attractive and affordable, and that the fund complement federal efforts to make earthquake insurance more available and affordable.

5012. (a) The department shall study availability, cost and adequacy of commercial insurance in covering property and business interruption losses encountered by small business due to earthquake. The purpose and scope of the study shall include, but not be limited, to the following:

(1) The total extent of structural damage, inventory loss, business interruption, and relocation costs that might be expected to result due to quakes of various magnitudes and mitigation measures to reduce losses.

(2) The premium, deductibles, and exclusions contained in commercial policies currently offered to insure against earthquake perils and the availability, affordability, and adequacy of those policies.

(3) Options for establishing and equitably funding a small business earthquake fund, similar to the Residential Earthquake Recovery Fund established by this chapter, to provide payments, particularly for business interruption, to small businesses which now find commercial coverage unavailable, unaffordable, or inadequate.

(b) In preparing, and conducting the study the department shall consult with the respective Chairpersons of the Assembly Finance and Insurance Committee, the Senate Insurance, Claims and Corporations Committee, and the Assembly Earthquake

Preparedness and Natural Disasters Committee prior to commencing the study and thereafter at least quarterly until the final report is submitted to the Legislature. The Franchise Tax Board shall provide information necessary to determine the size and type of businesses which should participate in a small business earthquake fund and data relating to establishing contributions to the fund from those businesses. The department shall also consult with the State Seismic Safety Commission, the Office of Emergency Services, Employment Development Department and other groups, individuals, and agencies as needed. The department is also authorized to retain outside assistance in conducting the study.

(c) A report on the study shall be submitted to the Governor and Legislature on or before January 1, 1992.

Article 2. Revenue Bonds

5020. (a) For the purposes of this article there is hereby established the California Residential Earthquake Recovery Fund Bond Committee composed of the Insurance Commissioner, the State Treasurer, the State Controller, and the Director of Finance.

(b) For the purposes of this article "committee" means the California Residential Earthquake Recovery Fund Bond Committee.

5021. As provided in this article, the committee may issue revenue bonds, negotiable notes, and bonds, pledging all or part of the revenues which may be received by the committee pursuant to this chapter. The committee has no power at any time or in any manner to pledge the credit or taxing power of the state or any of its local agencies.

(b) Every bond or note issued pursuant to this article shall contain a recital on the face thereof stating that neither the payment of the principle nor any part thereof, nor any interest therein, constitutes a debt, liability or general obligation of the State of California other than as provided in this chapter.

(c) The total amount of revenue bonds authorized to be issued pursuant to this article is one billion dollars ($1,000,000,000), exclusive of any refunding bonds.

(d) The interest on any bonds or notes issued pursuant to this article shall be includable as gross income for federal income tax purposes, and the board may not apply for any allocation from the California Debt Limit Allocation Committee.

5022. (a) All bonds issued under this chapter shall bear the facsimile signature of the commissioner and the facsimile countersignature of the treasurer, and the bonds shall be signed, countersigned, and endorsed by the officers who shall be in office on the date of issuance thereof, and each of the bonds shall bear an impress or reproduction of the Great Seal of the State of California. The bonds so signed, countersigned, endorsed, and sealed, when sold, are valid although the sale thereof be made at a date or dates upon which the officers having signed, countersigned and endorsed

the bonds, or any or either of the offices held by them at the time of signing, countersigning, or endorsing the bonds. Each bond issued under this chapter, if subject to call or redemption prior to maturity, shall contain a recital to that effect.

(b) The rate of interest to be borne by the bonds need not be uniform for all bonds of the same issue or series and may be determined and fixed by the committee by resolution adopted at or after the sale of the bonds. The highest bid received on the sale of the bonds shall be determined by deducting the total amount of the bonds shall be determined by deducting the total amount of the premium bid, if any, from the total amount of interest which the state should be required to pay from the date of the bonds or the last preceding interest payment date, whichever is latest, to the respective maturity dates of the bonds then offered for sale at the rates or rates specified in the bid, and the award shall be made on the basis of the lowest true interest cost of the state. The Treasurer, when authorized by resolution of the committee may sell bonds at less than their par or face value.

5023. On receipt of a resolution of the committee authorizing the issuance of bonds, the Treasurer shall provide for their preparation in accordance with the resolution. The bonds authorized to be issued shall be sold by the Treasurer, at public sale or at private sale, as directed by the committee. In the case of public sale, (a) the bond shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, upon sealed bids, to the bidder whose bid will result in the lowest true interest cost on account of the bonds, and (b) if no bids are received, or satisfactory, the Treasurer may reject all bids received if any, and either readvertise or sell the bonds at private sale.

5024. Bonds issue pursuant to this chapter are a legal investment for any state special or trust fund notwithstanding any law limiting the investments which may be made by the special or trust fund. The bonds of the committee shall be legal investments in which all public officers and public bodies of the state, its political subdivision, all municipalities and municipal subdivisions, all insurance companies, all banks, savings associations, trust companies, investment companies, and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used by any such private financial institution, person, or association as security for public and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds is authorized by the law, including deposits to secure public funds.

5025. Whenever the committee deems it will increase the salability or the price of the bonds, to obtain a legal opinion, other than that of the Attorney General, as to the validity of bonds, the committee may authorize the Treasurer to obtain such a legal

opinion. Payment of those legal services shall be made out of the proceeds of the sale of the bonds.

5026. The committee is authorized to employ financial consultants, advisers, and accountants as may be necessary in its judgment in connection with the issuance and sale of any bonds or other obligations of the board. Payment for these services may be made out of the proceeds of the sale of the bonds or other obligations.

5027. Section 10295 and Sections 10335 to 10382, inclusive, or the Public Contract Code shall not apply to agreements entered into the committee or by the Treasurer in connection with the obtaining of financing.

5028. Any resolution authorizing any bonds or the issue thereof shall prescribe the duties of the Treasurer with respect to the issuance, authentification, and interest thereon, and the redemption of the bonds.

5029. The committee may enter into any deeds of trust, indentures, or other agreements with any bank or trust company or other person in the United States having power to enter into those agreements, as security for the bonds, and may assign and pledge the revenues or receipts of the committee thereunder.

5030. The committee may provide, by resolution, for the issuance of refunding bonds for the purposes of refunding any bonds of the committee issued pursuant to this chapter and then outstanding, either by voluntary exchange with the holders of the outstanding, either by voluntary exchange with the holders of the outstanding bonds, or to provide funds to redeem and retire the outstanding bonds, with maturity or at any call date. The issuance of refunding bonds are governed by the foregoing provisions of this article insofar as they are applicable. Refunding bonds may also be issued to refund bonds previously issued for refunding purposes.

5031. All money received in the fund shall be first pledged for the payment of principal and interest due on any revenue bonds that have been issued pursuant to this chapter.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Insurance Fund for the purposes of conducting the Small Business Coverage Study pursuant to this act.

SEC. 3. This act shall not become operative unless Senate Bill 2596 is enacted by the Legislature.

CHAPTER 1166

An act to amend Sections 10083, 10086, 10086.1, and 10088.5 of, and to add Sections 10089, 10089.1, 10089.15, 10089.2, and 10089.3 to, the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 10083 of the Insurance Code is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or application. The offer of earthquake coverage shall contain the following language in at least 10-point bold type face:

YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE.

CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

THE COVERAGE, SUBJECT TO POLICY PROVISIONS, MAY BE PURCHASED AT ADDITIONAL COST ON THE FOLLOWING TERMS:

(A) AMOUNT OF DWELLING COVERAGE: _____

(B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY PAYMENT FROM YOUR COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR COVERAGE, THE INSURED VALUE OF YOUR COVERAGE, OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

(C) RATE OR PREMIUM: _____

YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE COVERAGE WITHIN 30 DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR IT SHALL BE CONCLUSIVELY PRESUMED THAT YOU HAVE NOT ACCEPTED THIS OFFER.

THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.

(b) The offer may contain additional provisions not in conflict with or in derogation of the foregoing.

(c) Use of the language prescribed by this section shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

SEC. 2. Section 10086 of the Insurance Code is amended to read:

10086. If an offer of earthquake coverage is accepted, the coverage shall be continued at the applicable rates and conditions, provided the policy of residential property insurance is not terminated by the named insured or insurer. If the offer is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy or residential property insurance. Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

SEC. 3. Section 10086.1 of the Insurance Code is amended to read:

10086.1. Where the offer of earthquake coverage has not been accepted, the insurer shall notify the named insured that the policy does not provide such coverage. The notice shall be prior to or concurrent with the renewal of the policy of residential property insurance after the offer on an every other year basis. This section shall not affect any other provisions of this chapter nor shall it affect coverage under the policy of residential property insurance.

SEC. 4. Section 10088.5 of the Insurance Code is amended to read:

10088.5. Notwithstanding Section 2081, nothing in Section 10088 exempts an insurer from its obligation under a fire insurance policy to cover the losses of a fire which is caused by or follows an earthquake.

SEC. 5. Section 10089 is added to the Insurance Code, to read:

10089. At a minimum, any offer of coverage of loss or damage caused by the peril of earthquake pursuant to Section 10081 shall include the following coverages: (a) dwelling; (b) personal property; and (c) additional living expenses of an amount no less than one thousand five hundred dollars ($1,500) to cover expenses while the residential dwelling remains uninhabitable due to a physical loss or damage from the peril of earthquake

SEC. 6. Section 10089.1 is added to the Insurance Code, to read:

10089.1. To the extent that the coverage is not already provided in the minimum offer of coverage, every insurer shall offer the following optional coverage to the offer of coverage required by Section 10081:

(a) Coverage in a specific percentage amount of the insured residential dwelling coverage for payment of services, except as provided by public entities, for the purpose of structural engineering costs to determine the habitability of the residential dwelling or coverage for the homeowner liability for the actual costs of residential dwelling demolition due to structural condemnation as

the result of damage or loss from the peril of earthquake.

(b) For purposes of this section, an insurer may satisfy its obligation to offer optional coverage by including the optional coverage specified in this section and in Section 10089.15 as part of the offer of coverage in Section 10089 and required by Section 10081 or as an endorsement to a policy of residential property coverage.

SEC. 7. Section 10089.15 is added to the Insurance Code, to read:

10089.15. To the extent that the coverage is not already provided in the minimum offer of coverage, every insurer shall offer the following optional coverage as part of the offer of coverage as required by Section 10081 only after the insured has completed and the insurer has verified retrofitting of the residential dwelling as described in subdivision (a) of Section 10089.2:

Coverage in the amount of ten thousand dollars ($10,000) for the purpose of reconstruction costs required to bring the residential dwelling on the residential property up to required current local residential dwelling building code standards as required by the local entity as part of the approval of the reconstruction permit process after an earthquake.

SEC. 8. Section 10089.2 is added to the Insurance Code, to read:

10089.2. (a) Subject to the approval of the commissioner, every insurer subject to this chapter shall, at the time of offering to issue or offer to renew coverage as part of the offer of coverage required by Section 10081, disclose to the applicant in writing as a freestanding document, which brings attention to the applicant, all discounts or surcharges, if any that are available from the insurer for that insurance and for any related insurance provided under that coverage as part of the offer of coverage required by Section 10081.

The insurer shall provide and disclose in writing any discounts or surcharges, if any, for earthquake hazard reductions, which shall include, but not be limited to, retrofitting of the residential dwelling by tying the structure to the foundation or bracing the structure to the foundation, reinforcement of the fireplace chimney, or securing of the hot water heater, and any other discounts that are available from the insurer.

(b) Each insurer that offers earthquake insurance through licensed agents or brokers shall provide in writing the document required in subdivision (a) and any documents required by subdivision (a) of Section 10083 to the agents and brokers listing all of the discounts or surcharges, if any, 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.

(c) An insurer is not subject to this section where an insured has completed earthquake hazard reductions and the insurer has provided discounts or surcharges for the specific policy in the form of premium rate changes.

SEC. 9. Section 10089.3 is added to the Insurance Code, to read:

10089.3. (a) Every insurer subject to this chapter shall file with the commissioner a disaster plan covering earthquakes before July 1,

1991.

(b) The disaster plan shall include specific provisions regarding procedures for handling claims under the insurer's issued policies or endorsements covering loss or damage from the peril of earthquake.

(c) The plan shall be deemed acceptable to the commissioner within 90 days of the date of filing. All disputes under this section shall be subject to resolution under the Administrative Procedure Act. The commissioner shall have discretion to review the disaster plan at any time.

(d) In the event that the commissioner finds that an insurer has filed an inadequate disaster plan or substantially failed to implement the disaster plan it filed with the commissioner pursuant to subdivision (a), the commissioner may require the insurer to file a revised disaster plan within 60 days that corrects any deficiencies identified by the commissioner. If a revised disaster plan is not filed within 60 days, the commissioner may suspend the insurer's authority to write residential property insurance in this state until the time that a revised plan is filed.

SEC. 10. This act shall not become operative unless Senate Bill 2902 is enacted.

CHAPTER 1167

An act to add Section 10087.5 to the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 10087.5 is added to the Insurance Code, to read:

10087.5. (a) Every policy of residential property insurance which provides coverage for loss or damage to a structure from the peril of earthquake, but which provides for an uninsured deductible amount computed as a percentage, shall clearly disclose on the page setting forth the policy declarations the basis upon which the percentage is computed. This disclosure shall be printed in at least 10-point bold typeface.

(b) Every advertisement for a policy subject to subdivision (a) shall clearly disclose the deductible by stating the applicable percentage and the basis upon which the percentage is computed.

CHAPTER 1168

An act to amend Sections 2621.9 and 2622 of, to amend, repeal, and add Sections 2705 and 2706 of, and to add Chapter 7.8 (commencing with Section 2690) to Division 2 of, the Public Resources Code, relating to seismic safety, and making an appropriation therefor.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 2621.9 of the Public Resources Code is amended to read:

2621.9. (a) A person who is acting as an agent for a seller of real property which is located within a delineated special studies zone, or the seller if he is acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within a delineated special studies zone, provided the maps prepared pursuant to this chapter, or the information contained in the maps, are reasonably available.

(b) For the purposes of this section, in all transactions subject to Section 1102 of the Civil Code, disclosure shall be provided by either of the following means:

(1) The real estate transfer disclosure statement set out in Section 1102.6 of the Civil Code.

(2) The local option real estate transfer disclosure statement set out in subdivision (a) of Section 1102.6 of the Civil Code.

(c) For the purposes of this section, "reasonably available" means that for any county that includes areas covered by a delineated special studies map, a notice has been posted at the offices of the county recorder, county assessor, and county planning commission that identifies the location of the map and the effective date of the notice, which shall not exceed 10 days beyond the date the county received the map from the State Geologist.

(d) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1102.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) For purposes of this section, Section 1102.13 of the Civil Code shall apply.

SEC. 2. Section 2622 of the Public Resources Code is amended to read:

2622. (a) In order to assist cities and counties in their planning, zoning, and building-regulation functions, the State Geologist shall delineate, by December 31, 1973, appropriately wide special studies zones to encompass all potentially and recently active traces of the San Andreas, Calaveras, Hayward, and San Jacinto Faults, and such

other faults, or segments thereof, as he deems sufficiently active and well-defined as to constitute a potential hazard to structures from surface faulting or fault creep. Such special studies zones shall ordinarily be one-quarter mile or less in width, except in circumstances which may require the State Geologist to designate a wider zone.

(b) Pursuant to this section, the State Geologist shall compile maps delineating the special studies zones and shall submit such maps to all affected cities, counties, and state agencies, not later than December 31, 1973, for review and comment. Concerned jurisdictions and agencies shall submit all such comments to the State Mining and Geology Board for review and consideration within 90 days. Within 90 days of such review, the State Geologist shall provide copies of the official maps to concerned state agencies and to each city or county having jurisdiction over lands lying within any such zone.

(c) The State Geologist shall continually review new geologic and seismic data and shall revise the special studies zones or delineate additional special studies zones when warranted by new information. The State Geologist shall submit all revised maps and additional maps to all affected cities, counties, and state agencies for their review and comment. Concerned jurisdictions and agencies shall submit all such comments to the State Mining and Geology Board for review and consideration within 90 days. Within 90 days of such review, the State Geologist shall provide copies of the revised and additional official maps to concerned state agencies and to each city or county having jurisdiction over lands lying within any such zone.

(d) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the offices of the county recorder, county assessor, and county planning commission, identifying the location of the map and the effective date of the notice.

SEC. 3. Chapter 7.8 (commencing with Section 2690) is added to Division 2 of the Public Resources Code, to read:

CHAPTER 7.8. SEISMIC HAZARDS MAPPING

2690. This chapter shall be known and may be cited as the Seismic Hazards Mapping Act.

2691. The Legislature finds and declares all of the following:

(a) Strong ground shaking, liquefaction, landslides, and other ground failure account for approximately 95 percent of economic losses caused by an earthquake.

(b) Areas subject to these processes during an earthquake have not been identified or mapped statewide, despite the fact that scientific techniques are available to do so.

(c) It is necessary to identify and map seismic hazard zones in order for cities and counties to adequately prepare the safety

element of their general plans and to encourage land use management policies and regulations to reduce and mitigate those hazards to protect public health and safety.

2692. (a) It is the intent of the Legislature to provide for a statewide seismic hazard mapping and technical advisory program to assist cities and counties in fulfilling their responsibilities for protecting the public health and safety from the effects of strong ground shaking, liquefaction or other ground failure, landslides, and other seismic hazards caused by earthquakes.

(b) It is further the intent of the Legislature that maps and accompanying information provided pursuant to this chapter be made available to local governments for planning and development purposes.

(c) It is further the intent of the Legislature that the Division of Mines and Geology, in implementing this chapter, shall, to the extent possible, coordinate its activities with, and use existing information generated from, the special studies zones mapping program pursuant to Chapter 7.5 (commencing with Section 2621), the landslide hazard identification program pursuant to Chapter 7.7 (commencing with Section 2670), and the inundation maps prepared pursuant to Section 8589.5 of the Government Code.

2693. As used in this chapter:

(a) "City" and "county" includes the City and County of San Francisco.

(b) "Geotechnical report" means a report prepared by a certified engineering geologist or a civil engineer practicing within the area of his or her competence, which identifies seismic hazards and recommends mitigation measures to reduce the risk of seismic hazard to acceptable levels.

(c) "Mitigation" means those measures that are consistent with established practice and that will reduce seismic risk to acceptable levels.

(d) "Project" has the same meaning as in Chapter 7.5 (commencing with Section 2621), except as follows:

(1) A single-family dwelling otherwise qualifying as a project may be exempted by the city or county having jurisdiction of the project.

(2) "Project" does not include alterations or additions to any structure within a seismic hazard zone which do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure.

(e) "Commission" means the Seismic Safety Commission.

2694. (a) A person who is acting as an agent for a seller of real property which is located within a seismic hazard zone, or the seller if he or she is acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within a seismic hazard zone, provided the maps prepared pursuant to this chapter or the information contained in the maps are reasonably available.

(b) For the purposes of this section, in all transactions subject to

Section 1102 of the Civil Code, disclosure shall be provided by either of the following means:

(1) The real estate transfer disclosure statement set out in Section 1102.6 of the Civil Code.

(2) The local option real estate transfer disclosure statement set out in subdivision (a) of Section 1102.6 of the Civil Code.

(c) For the purposes of this section, "reasonably available" means that for any county that includes areas covered by seismic hazard maps, a notice has been posted at the offices of the county recorder, county assessor, and county planning commission that identifies the location of the maps and the effective date of the notice, which shall not exceed 10 days beyond the date the county received the maps from the State Geologist.

(d) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1102.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) For purposes of this section, Section 1102.13 of the Civil Code shall apply.

2695. (a) On or before January 1, 1992, the board, in consultation with the State Geologist and the commission, shall develop all of the following:

(1) Guidelines for the preparation of maps of seismic hazard zones in the state.

(2) Priorities for mapping of seismic hazard zones. In setting priorities, the board shall take into account the following factors:

(A) The population affected by the seismic hazard in the event of an earthquake.

(B) The probability that the seismic hazard would threaten public health and safety in the event of an earthquake.

(C) The willingness of lead agencies and other public agencies to share the cost of mapping within their jurisdiction.

(D) The availability of existing information.

(3) Policies and criteria regarding the responsibilities of cities, counties, and state agencies pursuant to this chapter. The policies and criteria shall address, but not be limited to, the following:

(A) Criteria for approval of a project within a seismic hazard zone, including mitigation measures.

(B) The contents of the geotechnical report.

(C) Evaluation of the geotechnical report by the lead agency.

(4) Guidelines for evaluating seismic hazards and recommending mitigation measures.

(5) Any necessary procedures, including, but not limited to, processing of waivers pursuant to Section 2697, to facilitate the implementation of this chapter.

(b) In developing the policies and criteria pursuant to subdivision (a), the board shall consult with and consider the recommendations of an advisory committee, appointed by the board in consultation

with the commission, composed of the following members:

(1) An engineering geologist registered in the state.

(2) A seismologist.

(3) A civil engineer registered in the state.

(4) A structural engineer registered in the state.

(5) A representative of city government, selected from a list submitted by the League of California Cities.

(6) A representative of county government, selected from a list submitted by the County Supervisors Association of California.

(7) A representative of regional government, selected from a list submitted by the Council of Governments.

(8) A representative of the insurance industry.

All of the members of the advisory committee shall have expertise in the field of seismic hazards or seismic safety.

(c) At least 90 days prior to adopting measures pursuant to this section, the board shall transmit or cause to be transmitted a draft of those measures to affected cities, counties, and state agencies for review and comment.

2696. (a) The State Geologist shall compile maps identifying seismic hazard zones, consistent with the requirements of Section 2695. The maps shall be compiled in accordance with a time schedule developed by the State Geologist and based upon the provisions of Section 2695 and the level of funding available to implement this chapter.

(b) The State Geologist shall, upon completion, submit seismic hazard maps compiled pursuant to subdivision (a) to the board and all affected cities, counties, and state agencies for review and comment. Concerned jurisdictions and agencies shall submit all comments to the board for review and consideration within 90 days. Within 90 days of board review, the State Geologist shall revise the maps, as appropriate, and shall provide copies of the official maps to each state agency, city, or county, including the county recorder, having jurisdiction over lands containing an area of seismic hazard. The county recorder shall record all information transmitted as part of the public record.

(c) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the office of the county recorder, county assessor, and county planning commission, identifying the location of the map and the effective date of the notice.

2697. (a) Cities and counties shall require, prior to the approval of a project located in a seismic hazard zone, a geotechnical report defining and delineating any seismic hazard. If the city or county finds that no undue hazard of this kind exists, based on information resulting from studies conducted on sites in the immediate vicinity of the project and of similar soil composition to the project site, the geotechnical report may be waived. After a report has been approved or a waiver granted, subsequent geotechnical reports shall

not be required, provided that new geologic datum, or data, warranting further investigation is not recorded. Each city and county shall submit one copy of each approved geotechnical report, including the mitigation measures, if any, that are to be taken, to the State Geologist within 30 days of its approval of the report.

(b) In meeting the requirements of this section, cities and counties shall consider the policies and criteria established pursuant to this chapter. If a project's approval is not in accordance with the policies and criteria, the city or county shall explain the reasons for the differences in writing to the State Geologist, within 30 days of the project's approval.

2698. Nothing in this chapter is intended to prevent cities and counties from establishing policies and criteria which are more strict than those established by the board.

2699. Each city and county, in preparing the safety element to its general plan pursuant to subdivision (g) of Section 65302 of the Government Code, and in adopting or revising land use planning and permitting ordinances, shall take into account the information provided in available seismic hazard maps.

2699.5. (a) There is hereby created the Seismic Hazards Identification Fund, as a special fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the fund are continuously appropriated to the division for the purposes of this chapter.

(b) Notwithstanding Section 5001 of the Insurance Code, one-half of 1 percent of the moneys deposited in the California Residential Earthquake Recovery Fund in any calendar year shall be transferred to the Seismic Hazards Identification Fund for the purposes of carrying out this chapter. This subdivision shall become operative only if Assembly Bill 3913 or Senate Bill 2902 of the 1989–90 Regular Session of the Legislature is enacted and takes effect.

2599.6. This chapter shall become operative on April 1, 1991.

SEC. 3. Section 2705 of the Public Resources Code is amended to read:

2705. (a) All counties and cities shall collect a fee from each applicant for a building permit. Each such fee shall be equal to a specific amount of the proposed building construction for which the building permit is issued as determined by the local building officials. The fee amount shall be assessed in the following way:

(1) Group R occupancies, as defined in the 1985 Uniform Building Code and adopted in Part 2 (commencing with Section 2-101) of Title 24 of the California Administrative Code, one to three stories in height, except hotels and motels, shall be assessed at the rate of seven dollars ($7) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(2) All other buildings shall be assessed at the rate of fifteen dollars ($15) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(3) The fee shall be the amount assessed under paragraph (1) or

(2), depending on building type, or fifty cents ($0.50), whichever is the higher.

(b) In lieu of the requirements of subdivision (a), a county or city may elect to include a rate of seven dollars ($7) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, in its basic building permit fee for any Group R occupancy defined in paragraph (1) of subdivision (a), and a rate of fifteen dollars ($15) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, for all other building types. If collection of the fee is made pursuant to this subdivision, the amount of the fees required to be deposited in the Strong-Motion Instrumentation Special Fund pursuant to Section 2706 shall be equal to the sum of 0.007 percent of the total valuation of any Group R occupancy defined in paragraph (1) of subdivision (a), plus 0.015 percent of the total valuation of all other building types, for which building permits were issued during the accounting period. A county or city electing to collect the fee pursuant to this subdivision need not segregate the fees in a fund separate from any fund into which basic building permit fees are deposited.

"Building," for the purpose of this chapter, is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(c) A city or county may retain up to 5 percent of the total amount it collects under subdivision (a) or (b) for data utilization and seismic education incorporating data interpretations from data of the strong-motion instrumentation program.

(d) This section shall become inoperative on April 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. 4. Section 2705 is added to the Public Resources Code, to read:

2705. (a) All counties and cities shall collect a fee from each applicant for a building permit. Each such fee shall be equal to a specific amount of the proposed building construction for which the building permit is issued as determined by the local building officials. The fee amount shall be assessed in the following way:

(1) Group R occupancies, as defined in the 1985 Uniform Building Code and adopted in Part 2 (commencing with Section 2-101) of Title 24 of the California Administrative Code, one to three stories in height, except hotels and motels, shall be assessed at the rate of ten dollars ($10) per one hundred thousand dollars ($100,000), with appropriate fractions thereof. Of the amount assessed, three dollars ($3) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, shall be deposited in the Seismic Hazards Identification Fund.

(2) All other buildings shall be assessed at the rate of twenty-one dollars ($21) per one hundred thousand dollars ($100,000), with appropriate fractions thereof. Of the amount assessed, six dollars ($6)

per one hundred thousand dollars ($100,000), with appropriate fractions thereof, shall be deposited in the Seismic Hazards Identification Fund.

(3) The fee shall be the amount assessed under paragraph (1) or (2), depending on building type, or fifty cents ($0.50), whichever is the higher.

(b) In lieu of the requirements of subdivision (a), a county or city may elect to include a rate of ten dollars ($10) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, in its basic building permit fee for any Group R occupancy defined in paragraph (1) of subdivision (a), and a rate of twenty-one dollars ($21) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, for all other building types. If collection of the fee is made pursuant to this subdivision, the amount of the fees required to be deposited in the Strong-Motion Instrumentation Special Fund pursuant to Section 2706 shall be equal to the sum of 0.007 percent of the total valuation of any Group R occupancy defined in paragraph (1) of subdivision (a), plus 0.015 percent of the total valuation of all other building types, for which building permits were issued during the accounting period. The remaining amount of fees shall be deposited in the Seismic Hazards Identification Fund pursuant to Section 2699.5. A county or city electing to collect the fee pursuant to this subdivision need not segregate the fees in a fund separate from any fund into which basic building permit fees are deposited.

"Building," for the purpose of this chapter, is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(c) A city or county may retain up to 5 percent of the total amount it collects under subdivision (a) or (b) for data utilization and seismic education incorporating data interpretations from data of the strong-motion instrumentation program.

(d) This section shall become operative on April 1, 1991.

SEC. 5. Section 2706 of the Public Resources Code is amended to read:

2706. (a) All fees collected pursuant to Section 2705 shall be deposited in the State Treasury in the Strong-Motion Instrumentation Special Fund, which fund is hereby created, to be used exclusively for the purposes of this chapter. All moneys in such fund are continuously appropriated to the division for the purposes of this chapter.

(b) This section shall become inoperative on April 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. 6. Section 2706 is added to the Public Resources Code, to read:

2706. (a) All fees collected pursuant to Section 2705, except for those fees required to be deposited in the Seismic Hazards Identification Fund pursuant to Section 2705, shall be deposited in

the State Treasury in the Strong-Motion Instrumentation Special Fund, which fund is hereby created, to be used exclusively for the purposes of this chapter. All moneys in that fund are continuously appropriated to the division for the purposes of this chapter.

(b) This section shall become operative April 1, 1991.

SEC. 7. In implementing this chapter, the cost of the activities of the State Geologist and the department shall not exceed the funding levels provided in this chapter.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 1169

An act to add Sections 5011.5 and 5032 to the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 21, 1990]

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

SECTION 1. Section 5011.5 is added to the Insurance Code, to read:

5011.5. (a) The commissioner shall appoint an advisory committee to assist in the implementation of this chapter.

(b) The committee shall be composed of nine members in addition to the commissioner as follows:

(1) The Director of Emergency Services.

(2) One member of the Seismic Safety Commission selected by the commission.

(3) The Treasurer.

(4) Three members of the public, as follows:

(A) One member appointed by the Speaker of the Assembly.

(B) One member appointed by the Senate Rules Committee.

(C) One member appointed by the Governor.

(5) Three representatives of private insurers or private reinsurers or actuaries for insurers or reinsurers.

SEC. 2. Section 5032 is added to the Insurance Code, to read:

5032. The commissioner shall conduct a study on the utilization of taxable revenue bonds with the assistance of the advisory committee. The study shall be completed and a report issued on or before January 1, 1992. The study shall examine all of the provisions

of Article 2 of Chapter 4.5 (commencing with Section 5000) as a way to augment the fund, and shall examine any impact on the condition of the fund if the revenue bond limitation was increased.

SEC. 3. This act shall become operative only if Senate Bill 2902 of the 1989–90 Regular Session of the Legislature is chaptered.

CHAPTER 1170

An act to add Chapter 5.5 (commencing with Section 8350) to Division 1 of Title 2 of the Government Code, relating to a drug-free workplace.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Chapter 5.5 (commencing with Section 8350) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 5.5. DRUG-FREE WORKPLACE

Article 1. Definitions

8350. This chapter shall be known, and may be cited, as the Drug-Free Workplace Act of 1990.

8351. As used in this chapter:

(a) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in Article 2 (commencing with Section 8355) of an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this chapter.

(b) "Employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the grant or contract described in Article 2 (commencing with Section 8355)

(c) "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

(d) "Grantee" means the department, division, or other unit of a person or organization responsible for the performance under the grant.

(e) "Contractor" means the department, division, or other unit of a person or organization responsible for the performance under the contract.

Article 2. State Contractors and Grantees

8355. Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(b) Establishing a drug-free awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace.

(2) The person's or organization's policy of maintaining a drug-free workplace.

(3) Any available drug counseling, rehabilitation, and employee assistance programs.

(4) The penalties that may be imposed upon employees for drug abuse violations.

(c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

8356. (a) Each contract or grant awarded by a state agency may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of this article, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.

(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

(b) The Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with this chapter. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with this chapter.

(c) Every state agency that directly awards grants without review by the Department of General Services shall immediately notify the department of any individual or organization that has an award canceled on the basis of violation of this chapter.

8357. This chapter shall not be construed to require any contractor or grantee to ensure that other businesses with which it

subcontracts also provide drug-free workplaces.

CHAPTER 1171

An act to amend Sections 1250.9, 1797.98a, 1797.98c, and 1797.98e of, and to add Section 1797.98f to, the Health and Safety Code, and to repeal and add Section 16953.1 of the Welfare and Institutions Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 1250.9 of the Health and Safety Code is amended to read:

1250.9. (a) The Office of Statewide Health Planning and Development shall conduct a demonstration project to evaluate the accommodation of postsurgical care patients for periods not exceeding two days, except that the attending physician and surgeon may require that the stay be extended to no more than three days.

(b) The demonstration project shall operate for a period not to exceed six years, for no more than 12 project sites, one of which shall be located in Fresno County. Any of the 12 project sites may be distinct parts of health facilities, or any of those sites may be physically freestanding from health facilities. None of the project sites that are designated as distinct parts of health facilities, shall be located in the service area of any one of the six freestanding project sites. None of the project sites that are designated as distinct parts of health facilities shall have a service area that overlaps with any one or more service areas of the freestanding pilot sites. For the purposes of this section, service area shall be defined by the office.

(c) (1) The office shall establish standards for participation, commensurate with the needs of postsurgical care patients requiring temporary nursing services following outpatient surgical procedures.

(2) In preparing the standards for participation, the office may, as appropriate, consult with the state department and with a technical advisory committee which may be appointed by the Director of the Office of Statewide Health Planning and Development. The committee shall have no more than eight members, all of whom shall be experts in health care, as determined by the director of the office. One of the members of the committee shall, as determined by the director of the office, have specific expertise in the area of pediatric surgery and recovery care.

(3) If a technical advisory committee is established by the director of the office, members of the committee shall be reimbursed for any actual and necessary expenses incurred in connection with their

duties as members of the committee.

(d) Not later than six months prior to the conclusion of the demonstration project, the office shall submit an evaluation of the demonstration project to the Legislature on the effectiveness and safety of the demonstration project in providing recovery services to patients receiving outpatient surgical services. The office, as part of the evaluation, shall include recommendations regarding the establishment of a new license category or amendment of existing licensing standards.

(e) The office shall establish and administer the demonstration project in facilities with no more than 20 beds which continuously meet the standards of skilled nursing facilities licensed under subdivision (c) of Section 1250, except that the office may, as appropriate and unless a danger to patients would be created, eliminate or modify the standards. This section shall not prohibit general acute care hospitals from participating in the demonstration project. The office may waive those building standards applicable to a project site which is a distinct part of a health facility which are inappropriate, as determined by the office, to the demonstration project. Notwithstanding health facility licensing regulations contained in Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations, a project site which is a distinct part of a health facility shall comply with all standards for participation established by the office and with all regulations adopted by the office to implement this section. A project site which is a distinct part of a health facility shall not, for the duration of the pilot project, be subject to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations which conflict, as determined by the office, with the demonstration project standards or regulations.

(f) The department shall issue a facility identification number to each facility selected for participation in the demonstration project.

(g) Persons who wish to establish recovery care programs shall make application to the office for inclusion in the pilot program. Applications shall be made on forms provided by the office and shall contain sufficient information determined as necessary by the office.

(h) As a condition of participation in the pilot program, each applicant shall agree to provide statistical data and patient information that the office deems necessary for effective evaluation. It is the intent of the Legislature that the office shall develop procedures to assure the confidentiality of patient information and shall only disclose patient information, including name identification, as is necessary pursuant to this section or any other law.

(i) Any authorized officer, employee, or agent of the office or the state department may, upon presentation of proper identification, enter and inspect any building or premises and any records, including patient records, of a pilot project participant at any reasonable time to review compliance with, or to prevent any

violation of, this section or the regulations and standards adopted thereunder.

(j) The office may suspend or withdraw approval of any or all pilot projects with notice, but without hearing if it determines that patient safety is being jeopardized.

(k) The office may charge applicants and participants in the program a reasonable fee to cover its actual cost of administering the pilot program and the cost of any committee created under this section.

(*l*) The office may contract with a medical consultant or other advisers as necessary, as determined by the office. Due to the necessity to expedite the demonstration project and its extremely specialized nature, the contracts shall be exempt from Section 10373 of the Public Contract Code, and shall be considered sole-source contracts.

(m) The office may adopt emergency regulations to implement this section in accordance with Section 11346.1 of the Government Code, except that the regulations shall be exempt from the requirements of subdivisions (e), (f), and (g) of that section. The regulations shall be deemed an emergency for the purposes of Section 11346.1.

Applications to establish any of the four project sites authorized by the amendments made to this section during the 1987–88 Regular Session of the California Legislature shall be considered by the office from among the applications submitted to it in response to its initial request for proposal process.

(n) Any administrative opinion, decision, waiver, permit, or finding issued by the office prior to July 1, 1990, with respect to any of the demonstration projects approved by the office prior to July 1, 1990, shall automatically be extended by the office to remain fully effective as long as the demonstration projects are required to operate pursuant to this section.

(o) The office shall not grant approval to a postsurgical recovery care facility, as defined in Section 97500.111 of Title 22 of the California Code of Regulations, which is freestanding, as defined in Section 97500.49 of Title 22 of the California Code of Regulations, to begin operation as a participating demonstration project if it is located in the County of Solano.

SEC. 2. Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. Each county may establish an Emergency Medical Services Fund, upon adoption of a resolution by the board of supervisors. The money in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its Emergency Medical Services Fund administered by the state. Costs of administering the fund shall be reimbursed by the fund, up to 10 percent of the amount of the fund. The fund shall be

utilized to reimburse physicians and surgeons and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county. Fifty-eight percent of the money in the fund shall be distributed to physicians and surgeons for emergency services provided by all physicians and surgeons, except those physicians and surgeons employed by county hospitals, in general acute care hospitals that provide basic or comprehensive emergency services up to the time the patient is stabilized, 25 percent of the fund shall be distributed only to hospitals providing disproportionate trauma and emergency medical care services, and 17 percent of the fund shall be distributed for other emergency medical services purposes as determined by each county. The source of the money in the fund shall be the penalty assessment made for this purpose, as provided in Section 1465 of the Penal Code.

SEC. 3. Section 1797.98c of the Health and Safety Code is amended to read:

1797.98c. (a) Physicians and surgeons wishing to be reimbursed shall submit their losses incurred due to patients who do not make any payment for services and for whom no responsible third party makes any payment. No physicians and surgeons shall be reimbursed greater than 50 percent of those losses.

(b) If, after receiving payment from the fund, a physician and surgeon is reimbursed by a patient or a responsible third party, the physician and surgeon shall do one of the following:

(1) Notify the administering agency, and, after notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the fund. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician and surgeon shall reimburse the fund 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 fund.

(2) Notify the administering agency of the payment and reimburse the fund in an amount equal to the amount collected from the patient or third-party payor, but not more than the amount of the reimbursement received from the fund for that patient's care.

(c) Reimbursement for losses incurred by any physician and surgeon shall be limited to services provided to a patient described in subdivision (f) of Section 16952 of the Welfare and Institutions Code, and where all of the following conditions have been met:

(1) The physician and surgeon has inquired if there is a responsible third-party source of payment.

(2) The physician and surgeon has billed for payment of services.

(3) Either of the following:

(A) A period of not less than three months has passed from the date the physician and surgeon billed the patient or responsible third party, during which time the physician and surgeon has made reasonable efforts to obtain reimbursement and has not received

reimbursement for any portion of the amount billed.

(B) The physician and surgeon has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician and surgeon.

(4) The physician and surgeon has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of funds from the fund.

(d) A listing of patient names shall accompany a physician and surgeon's submission, and those names shall be given full confidentiality protections by the administering agency.

SEC. 4. Section 1797.98e of the Health and Safety Code is amended to read:

1797.98e. (a) It is the intent of the Legislature that a simplified, cost-efficient system of administration of this chapter be developed so that the maximum amount of funds may be utilized to reimburse physicians and surgeons and for other emergency medical services purposes. The administering agency shall establish procedures and time schedules for the submission and processing of proposed reimbursement requests submitted by physicians and surgeons. The schedule shall provide for disbursements of moneys in the Emergency Medical Services Fund on at least an annual basis to applicants who have submitted accurate and complete data for payment by a date to be established by the administering agency. When the administering agency determines that claims for payment are of sufficient numbers and amounts, that if paid, the claims would exceed the total amount of funds available for payment, the administering agency shall prorate payments to each claimant at a level less than the maximum payment level. Each administering agency may encumber sufficient funds during one fiscal year to reimburse claimants for losses incurred during that fiscal year for which claims will not be received until after the fiscal year. The administering agency may, as necessary, request records and documentation to support the amounts of reimbursement requested by physicians and surgeons and the administering agency may review and audit such records for accuracy. Reimbursements requested and reimbursements made that are not supported by records may be denied to and recouped from physicians and surgeons. Physicians and surgeons found to submit requests for reimbursement that are inaccurate or unsupported by records may be excluded from submitting future requests for reimbursement.

(b) Each provider of health services which receives payment under this chapter shall keep and maintain records of the services rendered, the person to whom rendered, the date, and any additional information the administering agency may, by regulation, require, for a period of three years from the date the service was provided.

(c) During normal working hours, the administering agency may make any inspection and examination of a hospital's or physician and surgeon's books and records needed to carry out the provisions of this chapter. A provider who has knowingly submitted a false request for

reimbursement shall be guilty of civil fraud.

SEC. 5. Section 1797.98f is added to the Health and Safety Code, to read:

1797.98f. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency Medical Services Fund for services provided in that hospital, if all of the following conditions are met:

(a) The services are provided in a basic or comprehensive general acute care hospital emergency department.

(b) The physician and surgeon is not an employee of the hospital.

(c) All provisions of Section 1797.98c are satisfied, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.

(d) Reimbursement from the Emergency Medical Services Fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.

For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.

SEC. 6. Section 16953.1 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 16953.1 is added to the Welfare and Institutions Code, to read:

16953.1. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency Medical Services Fund for services provided in that hospital, if all of the following conditions are met:

(a) The services are provided in a basic or comprehensive general acute care hospital emergency department.

(b) The physician and surgeon is not an employee of the hospital.

(c) All provisions of Section 16955 of the Welfare and Institutions Code are satisfied, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.

(d) Reimbursement from the Emergency Medical Services Fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.

For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or an emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.

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

SEC. 9. Due to the unique circumstances concerning the effects of the rapid transition from a rural to an urban area which the County of Solano is experiencing, and the disruption to the availability of health care services for public pay or uninsured clients which likely would result from the operation of a demonstration project in that setting, the Legislature finds and declares that, for purposes of subdivision (o) of Section 1250.9 of the Health and Safety Code, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to extend a demonstration program relating to postsurgical care, and to conform provisions of law pertaining to physician and surgeon reimbursement from county emergency medical services funds to changes made by Chapters 50 and 51 of the Statutes of 1990, it is necessary that this act take effect immediately.

CHAPTER 1172

An act relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board to pay the costs of contracting for consulting services to study the equity of present benefits available under the State Teachers' Retirement System. The study shall include

information and recommendations from employer and employee organizations. The report shall be submitted to the appropriate committees of the Legislature on or before January 1, 1992.

CHAPTER 1173

An act to add and repeal Article 9.4 (commencing with Section 25207) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Article 9.4 (commencing with Section 25207) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 9.4. Banned, Unregistered, or Outdated Agricultural Wastes

25207. The Legislature finds and declares all of the following:

(a) Small farmers need an appropriate and economic means of disposing of banned, unregistered, or outdated agricultural wastes.

(b) An awareness of the problems caused by agricultural wastes has increased as information has become available from the planning process for county hazardous waste management plans conducted pursuant to Article 3.5 (commencing with Section 25135).

(c) Banned, unregistered, or outdated agricultural wastes are located in rural areas.

(d) The abandonment or illegal disposal of these agricultural wastes is a threat to water supplies and wildlife habitat.

25207.1. For purposes of this article, the following definitions apply:

(a) "Banned or unregistered agricultural waste" means a hazardous waste, as defined in Section 25117, including an extremely hazardous waste, containing an economic poison for which the Administrator of the Environmental Protection Agency has canceled or suspended its registration after purchase pursuant to Part 164 (commencing with Section 164.1) of Subchapter E of Chapter 1 of Title 40 of the Code of Federal Regulations, or for which the Director of Food and Agriculture has canceled or suspended its registration after purchase pursuant to Section 12825, 12826, 12827, or 12827.5 of the Food and Agricultural Code.

(b) "Economic poison" means an economic poison, as defined in Section 12753 of the Food and Agricultural Code.

(c) "Eligible participant" means any person who operates a farm for the purpose of cultivating the soil or raising any agricultural or horticultural commodity and stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes.

(d) "Outdated agricultural waste" means an economic poison which can be classified as a retrograde material, as defined in Section 25121.5.

(e) "Registrant" has the same meaning as defined in Section 12755 of the Food and Agricultural Code.

25207.2. (a) A county may develop and establish a program for the collection of banned, unregistered, or outdated agricultural waste, which shall be implemented and operated pursuant to this article. In implementing this collection program, the county may consult with the department, the Department of Food and Agriculture, licensed agricultural pest control operators, agricultural pest control advisers, and the University of California.

(b) A county may implement a collection program with the assistance of the county agricultural commissioner.

25207.3. A participating county shall conduct a survey to identify all eligible participants in the county, within 180 days after the county elects to implement this article, to assess the amount, kind, and conditions of the banned, unregistered, or outdated agricultural waste which will be collected by the program. The survey shall include, but not be limited to, an evaluation of the banned, unregistered, or outdated agricultural waste to determine if it is securely contained, requires a removal or remedial action, whether the contents of the wastes are known, and whether it is clearly labeled.

25207.4. (a) If a county implements a collection program that includes collection sites for the dropoff of banned, outdated, or unregistered agricultural waste by eligible participants, the county shall, upon selection of the sites, complete and submit to the department, for review and approval, both of the following:

(1) An application for Hazardous Waste Identification Numbers.

(2) A completed application for an extremely hazardous waste disposal permit, which shall identify the collection site.

(b) A county which elects to implement this article shall submit, for review and approval by the department, requests for variances, in accordance with paragraphs (1) and (2) of subdivision (a) of Section 25143, from the requirements for hazardous waste hauler registration and vehicle registration specified in Sections 25163 and 25168.3, and the manifest requirements specified in Section 25160, for the banned or unregistered agricultural waste which is non-RCRA waste and is to be collected pursuant to the program.

25207.5. The collection program shall include an educational program for educating eligible participants on the procedures for disposing of banned, unregistered, or outdated agricultural waste, liability problems, and the legal disposal of other types of hazardous waste generated by agricultural processes.

25207.6. If the collection program includes collection sites for the dropoff of banned, unregistered, or outdated agricultural waste, the collection program shall include all of the following:

(a) The waste shall be transported in the participants own vehicle.

(b) Except as provided in subdivision (c), the waste shall be transported in amounts which do not exceed a total volume of five gallons or a total weight of 50 pounds.

(c) If the waste is to be transported by an eligible participant in amounts which exceed the amounts specified in subdivision (b), a copy of the variances specified in subdivision (b) of Section 25207.4 shall be given to that participant before the waste is transported and the variance shall be carried in the vehicle while the waste is transported.

(d) The waste shall be transported in accordance with the Vehicle Code and the regulations adopted by the Department of the California Highway Patrol pursuant to subdivision (b) of Section 34501 of the Vehicle Code.

(e) Notwithstanding subdivision (c), any eligible participant who generates more than 100 kilograms of any RCRA hazardous waste or over one kilogram per month of any extremely hazardous waste shall obtain an EPA identification number and use a manifest, as specified in subdivision (a) of Section 25160, when transporting banned, unregistered, or outdated agricultural waste subject to the collection program, which shall be completed in accordance with regulations specified in Section 261.5 of Title 40 of the Code of Federal Regulations. The participant shall complete and process the manifest in the following manner:

(1) The participant shall send the blue copy of the manifest to the department.

(2) The designated site for the collection of the waste shall be listed in Block 9 of the manifest.

(3) The county shall act as the operator of the designated site for the collection of the waste and shall follow the regulations adopted pursuant to Section 25160 as the operator of that facility, as specified in Section 25207.12.

25207.7. The banned, unregistered, or outdated agricultural waste transported from the collection site shall be transported by a registered hazardous waste hauler to an offsite hazardous waste disposal facility in a certified vehicle and container and a manifest shall be completed for the waste, in accordance with the requirements of Sections 25160, 25163, and 25168.3. The waste shall also be handled and transported in accordance with the regulations adopted by the Environmental Protection Agency concerning the mangement of hazardous waste, including, but not limited to, the regulations specified in Part 260 (commencing with Section 260.1) to Part 270 (commencing with Section 270.1), inclusive, of Subchapter I of Chapter 1 of the Code of Federal Regulations, the regulations adopted by the federal Department of Transportation concerning the transportation of hazardous materials, and any applicable state

laws and regulations.

25207.8. A report regarding any transportation accident involving banned, unregistered, or outdated agricultural waste transported pursuant to a collection program shall be submitted to the department by the participating county within 10 days of the incident.

25207.9. A county implementing a collection program pursuant to this article may charge a fee to eligible participants to cover the county's costs of implementing the program, including, but not limited to, the costs of collecting, handling, transporting, treating, recycling, and disposing of the waste.

25207.10. The collection program shall require, when feasible, that the banned, unregistered, or outdated agricultural wastes which are collected are recycled. If not recycled, the wastes shall be treated or disposed of in compliance with the requirements of this chapter.

25207.11. (a) Any eligible participant who submits banned, unregistered, or outdated agricultural waste for collection in a program established pursuant to this article is exempt from the fees imposed by Sections 25174.1, 25205.2, 25205.5, 25205.7, and 25205.8, from the reporting requirements of Section 25342, and from the tax imposed pursuant to Section 25345, with regard to the banned, unregistered, or outdated waste submitted for collection.

(b) An eligible participant who submits banned, unregistered, or outdated agricultural waste for collection is exempt from the hazardous waste facilities permit requirements of Section 25201 with regard to the management of banned, unregistered, or outdated agricultural waste submitted for collection.

(c) A county operating a collection program in compliance with this article shall not be held liable in any cost recovery action brought pursuant to Section 25360 for any hazardous waste which has been properly handled and transported to an authorized hazardous waste treatment or disposal facility, in compliance with the requirements of this chapter, at a location other than that of the collection program.

25207.12. For purposes of complying with the manifest requirements of subdivision (b) of Section 25160, a county which collects banned, unregistered, or outdated agricultural waste pursuant to this article shall be deemed to be the person who produced the hazardous waste, if the banned, unregistered, or outdated agricultural waste collected by the county is labeled and no remedial or removal action is required.

25207.13. This article shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 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. 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 counties which are currently attempting to collect agricultural waste to have the benefit of the collection program for banned or unregistered agricultural waste which would be enacted by this act, thereby better protecting health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1174

An act relating to taxation.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. The Franchise Tax Board shall study currently pending federal legislative tax proposals to change the treatment of capital gains and losses, and the effect those proposals would have upon California. The Franchise Tax Board shall report the results of the study to the Legislature on or before the time the board is required to submit its next annual report pursuant to Section 19270 of the Revenue and Taxation Code, and may incorporate its results into that annual report.

CHAPTER 1175

An act to add and repeal Section 18400.1 of, to amend, add, and repeal Section 18502 of, and to add and repeal Chapter 3.5 (commencing with Section 18420) to Part 2.1 of Division 31 of, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 18400.1 is added to the Health and Safety Code, to read:

18400.1. (a) The enforcement agency shall enter and inspect all mobilehome parks, as required under this part, at least once every five years, to ensure enforcement of this part and the regulations adopted pursuant to this part. Any citations for violations of this part shall be issued pursuant to Chapter 3.5 (commencing with Section 18420).

(b) In developing its program for inspections, the enforcement agency shall give first priority to inspections of those mobilehome parks which it believes may have the most serious violations of this part.

(c) Nothing in this part shall be construed to allow the enforcement agency to issue a citation for a violation of existing laws or regulations which were not violations of the laws or regulations at the time the mobilehome park received its original permit to operate or the mobilehome received its original installation permit, unless a condition in the park or mobilehome endangers the life, limb, health, property, safety or welfare of the public or occupants thereof.

(d) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 2. Chapter 3.5 (commencing with Section 18420) is added to Part 2.1 of Division 13 of the Health and Safety Code, to read:

CHAPTER 3.5. CITATIONS

18420. (a) If upon inspection, the enforcement agency determines that a mobilehome park is in violation of any provision of this part, or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a citation to correct the violation to the responsible person, as defined by Section 18603, and to the holder of the permit to operate the mobilehome park. However, in the event of a violation that constitutes an imminent threat to health and safety, the citation shall be issued immediately and served on the responsible person or the holder of the permit to operate the mobilehome park. The holder of the permit to operate the mobilehome park shall be responsible for the correction of any violations for which a citation has been given pursuant to this subdivision.

(b) If, upon inspection, the enforcement agency determines that

a mobilehome, an accessory building or structure, or lot is in violation of any provision of Chapter 4 (commencing with Section 18500) or Chapter 5 (commencing with Section 18601), Chapter 6 (commencing with 18690), or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a citation to correct the violation to the registered owner, with a copy to the occupant of the mobilehome, if different from the registered owner, and the responsible party, as defined by Section 18603, or holder of the permit to operate the mobilehome park. However, in the event of a violation that constitutes an imminent threat to health and safety, the citation shall be issued immediately and served upon the occupant, with a copy mailed to the registered owner, if different from the occupant, and the responsible party or holder of the permit to operate the mobilehome park. The registered owner shall be responsible for the correction of any violations for which a citation has been given pursuant to this subdivision.

(c) Service of the citation shall be effected either personally or by first-class mail. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provisions or regulation alleged to have been violated, as well as any penalty provided by law for failure to make timely correction. The citation shall fix the earliest feasible time, as determined by the enforcement agency, for the elimination of the condition constituting the alleged violation.

18421. If the holder of the permit to operate the mobilehome park or the registered owner of the mobilehome disputes a determination by the enforcement agency regarding the alleged violation, the alleged failure to correct the violation in the required timeframe or regarding the reasonableness of the deadline for correction specified by the citation, the holder of the permit to operate the mobilehome park or the registered owner of the mobilehome may request an informal conference with the enforcement agency. The informal conference, any subsequent hearings, or appeals of the decision of the enforcement agency shall be conducted in accordance with procedures prescribed by the department.

18423. The remedies provided by this chapter are cumulative, and shall not be construed to supersede other provisions of law providing sanctions for violators of this part, including, but not limited to, Sections 18510 and 18700. Nothing in this chapter shall be construed to restrict any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

18424. This chapter shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute,

which is enacted before January 1, 1997, deletes or extends that date.

SEC. 5. Section 18502 of the Health and Safety Code is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

This section shall become operative on January 1, 1996.

SEC. 6. Section 18502 is added to the Health and Safety Code, to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) (1) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(2) Except for a special occupancy park, an additional annual fee of four dollars ($4) per lot shall be paid to the department or the local enforcement agency, as appropriate, at the time of payment of the annual operating fee. All revenues derived from this fee shall be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)) and any regulations adopted pursuant to the act.

(3) The Legislature hereby finds and declares that the health and safety of mobilehome park occupants is a matter of public interest and concern and that the fee paid pursuant to paragraph (2) shall be used exclusively for the inspection of mobilehome parks and mobilehomes to ensure that the living conditions of mobilehome

park occupants meet the health and safety standards of this part and the regulations adopted pursuant thereto. Therefore, notwithstanding any other provisions of law or local ordinance, rule, regulation, or initiative measure to the contrary, the holder of the permit to operate the mobilehome park shall be entitled to directly charge one-half of the per lot additional annual fee specified herein to each homeowner, as defined in Section 798.9 of the Civil Code. In that event, the holder of the permit to operate the mobilehome park shall be entitled to directly charge each homeowner for one-half of the per lot additional annual fee at the next billing for the rent and other charges immediately following the payment of the additional fee to the department or local enforcement agency.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 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.

Moreover, 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 1176

An act to add Section 5450.3 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 5450.3 is added to the Welfare and Institutions Code, to read:

5450.3. (a) A three-year pilot program is hereby authorized in Napa County to establish a 10-bed locked facility for the provision of community care and treatment for mentally disordered persons who are placed in Napa State Hospital or another health facility because no community placements are available to meet the needs of these patients. Due to the secure environment, 75 square feet of outdoor space per client shall be available for client use. It is the intent of the Legislature to carefully evaluate this specific approach to determine its potential for replication in other limited jurisdictions. Participation in this pilot program by Napa County shall be on a voluntary basis. The pilot program shall be implemented notwithstanding the following licensure requirements enforced by the State Department of Social Services:

(1) Subdivision (a) of Section 1502 of the Health and Safety Code which defines a Community Care Facility as providing nonmedical care.

(2) Subdivision (a) of Section 1505 of the Health and Safety Code which exempts any health facility, as defined by Section 1250 of the Health and Safety Code, from licensure under the California Community Care Facilities Act.

(3) Section 1507 of the Health and Safety Code which limits the provision of medical services to only incidental medical services in community care facilities.

(4) Paragraph (4) of subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations which states that an adult residential facility provides nonmedical care.

(5) Paragraph (7) of subdivision (a) of Section 80072 of Title 22 of the California Code of Regulations which relates to a client's personal right to not be locked in any room, building, or facility premises. However, for purposes of this section a client cannot be locked in any room.

(b) Clients provided care within this pilot facility shall be conservatees as defined by Section 5350 who, prior to the establishment of this program, received care at either Napa State Hospital or were placed in facilities for the mentally disordered.

(c) Standards for services provided shall be developed by the Napa County Local Mental Health Director in consultation with and approved by the State Department of Mental Health and monitored regularly by the department for compliance to these standards. These services shall be on a 24-hour basis in a therapeutic home-like environment. The services shall cover the full range of the social rehabilitation model concept, including, but not limited to:

(1) Counseling.

(2) Day treatment.

(3) Crisis intervention.

(4) Vocational training.

(5) Medication evaluation and management by a licensed physician and other licensed professional and paraprofessional staff who possess a valid license or certificate to perform this function.

(d) Administration of medication and monitoring of medication shall occur notwithstanding statutory and regulatory licensure requirements for community care facilities to the contrary. Standards for use of medications shall be developed and monitored by the State Department of Mental Health.

(e) The facility shall be licensed and monitored by the State Department of Social Services and shall comply with all licensing requirements except those specifically exempted by this section. The State Department of Social Services shall conduct inspections of the facility pursuant to Section 1533 of the Health and Safety Code and shall be given immediate access to the facility.

(f) In staffing the pilot project, the Napa County Board of Supervisors shall give full consideration to each potential means of implementation, including, but not limited to, the clinical, programmatic, and economic benefits and advantages of each alternative. The pilot program shall meet all of the staffing requirements of subdivision (b) of Section 5453. The staffing ratio shall be on a one-to-one basis. The staff shall use and document the actions of a multidisciplinary professional consultation staff to meet the specific diagnostic and treatment needs of clients. The staff shall include, but need not be limited to, a licensed psychiatrist, a psychologist, a social worker, and a psychiatric technician. One or more of the following licensed professionals shall be present at the facility at all times:

(1) A psychiatrist.

(2) A registered psychiatric nurse.

(3) A psychiatric technician.

(g) The State Department of Mental Health shall certify the program content and monitor the project's functions on a regular basis and the State Department of Social Services shall regularly evaluate the facility in accord with its statutory and regulatory licensure functions, pursuant to subdivisions (d) and (e).

(h) The Napa County Local Mental Health Director, the State Department of Mental Health, and the State Department of Social Services shall jointly report to the Legislature within three years of the commencement of operation of the first facility authorized pursuant to this section regarding the progress and cost effectiveness demonstrated by the pilot program. The report shall evaluate whether the pilot program is effective based on clinical indicators, and is successful in preventing future placement of its clients in state hospitals or other long-term health facilities, and shall report whether the cost of care in the pilot facility is less than the cost of care in state hospitals or in other long-term health facility options. The evaluation report shall include, but shall not be limited to, an evaluation of the selected method of project staffing, and an analysis of the effectiveness of the pilot program at meeting all of the following objectives:

(1) That the clients placed in the facility show improved global assessment scores, as measured by preadmission and postadmission

tests.

(2) That the clients placed in the facility demonstrate improved functional behavior as measured by preadmission and postadmission tests.

(3) That the clients placed in the facility have reduced medication levels as measured by preadmission and postadmission tests. The report shall also include information on community reaction concerning locating this type of facility in the general community, any major problems created by the concept of this type of facility, the appropriate type of client to be placed in this type of facility, and the appropriate licensing agency and category of licensure for facilities of this nature.

(i) The pilot program shall be deemed successful if it demonstrates all of the following:

(1) That costs of the program are no greater than public expenditures for providing alternative services to the clients served by the program.

(2) That the benefit to the clients, as described in subdivision (h), is improved by the program.

(j) Commencement of the pilot program pursuant to this section shall be contingent upon Napa County and the department identifying funds for this purpose described in a financial plan which is approved in advance by the Department of Finance.

CHAPTER 1177

An act to add Sections 25350.55, 29924.5, 37351.5, and 43732.5 to the Government Code, relating to local agency debt financing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 25350.55 is added to the Government Code, to read:

25350.55. (a) Prior to entering into an agreement to finance the lease or lease-purchase of property through the issuance of certificates of participation or lease revenue bonds, the board may elect, by resolution, to guarantee payment under that financing agreement in accordance with the following:

(1) A county that elects to participate under this section shall provide notice to the Controller of that election, which notice shall include a schedule for the payments to be made by the county under that financing agreement, and identify a trustee appointed by the county for the purposes of this section.

(2) In the event that, for any reason, the funds otherwise available

to the county will not be sufficient to make any payment under the financing agreement at the time that payment is required, the county shall so notify the trustee. The trustee shall immediately communicate that information to the affected holders of certificates of participation or bondholders, and to the Controller.

(3) When the Controller receives notice from the trustee as described in paragraph (2), or the county fails to make any payment under the financing agreement at the time that payment is required, the Controller shall make an apportionment to the trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which that county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2 of the Revenue and Taxation Code, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(b) This section shall not be construed to obligate the State of California to make any payment to a county from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a county, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a county in accordance with this section.

SEC. 2. Section 29924.5 is added to the Government Code, to read:

29924.5. (a) Prior to the issuance by a county of bonds pursuant to this chapter, the board may elect, by resolution, to guarantee payment on outstanding bonds of the county issued pursuant to this chapter in accordance with the following:

(1) A county that elects to participate under this section shall provide notice to the Controller of that election, which notice shall include a schedule for the repayment of principal and interest on the bonds, and identify a bond trustee appointed by the county for the purposes of this section.

(2) In the event that, for any reason, the amount of property tax revenues made available pursuant to this article for the payment of principal and interest of the bonds will not be sufficient for that purpose at the time payment on principal, interest, or both, is required as to any one or more of those bonds, the county shall so notify the bond trustee. The bond trustee shall immediately communicate that information to the affected bondholder or bondholders and to the Controller.

(3) When the Controller receives notice from the trustee as described in paragraph (2), or the amount of property tax revenues made available pursuant to this article for the payment of principal and interest of the bonds is not sufficient for that purpose at the time payment on principal, interest, or both, is required as to any one or

more of those bonds, the Controller shall make an apportionment to the bond trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which that county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2 of the Revenue and Taxation Code, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(4) A county shall be entitled to reimbursement, from tax revenues collected pursuant to this article, in an amount equal to the amount by which its allocation or allocations under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2 of the Revenue and Taxation Code are reduced pursuant to subdivision (c).

(b) This section shall not be construed to obligate the State of California to make any payment to a county from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a county, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a county in accordance with this section.

SEC. 3. Section 37351.5 is added to the Government Code, to read:

37351.5. (a) Prior to the entering into agreement to finance the lease or lease-purchase of property through the issuance of certificates of participation of lease revenue bonds, the legislative body of a city may elect, by resolution, to guarantee payment under that financing agreement in accordance with the following:

(1) A city that elects to participate under this section shall provide notice to the Controller of that election, which notice shall include a schedule for the payments to be made by the city under that financing agreement, and identify a trustee appointed by the city for the purposes of this section.

(2) In the event that, for any reason, the funds otherwise available to the city will not be sufficient to make any payment under the financing agreement at the time that payment is required, the city shall so notify the bond trustee. The trustee shall immediately communicate that information to the affected holders of certificates of participation or bondholders, and to the Controller.

(3) When the Controller receives notice from the trustee as described in paragraph (2), or the city fails to make any payment under the financing agreement at the time that payment is required, the Controller shall make an apportionment to the trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which that city is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of

Division 2 of the Revenue and Taxation Code, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the city would otherwise be entitled under that chapter.

(b) This section shall not be construed to obligate the State of California to make any payment to a city from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a city, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a city in accordance with this section.

SEC. 4. Section 43732.5 is added to the Government Code, to read:

43732.5. (a) Prior to the issuance by a city of bonds pursuant to this chapter, the legislative body may elect, by resolution, to guarantee payment on outstanding bonds of the city issued pursuant to this chapter in accordance with the following:

(1) A city that elects to participate under this section shall provide notice to the Controller of that election, which notice shall include a schedule for the repayment of principal and interest on the bonds, and identify a bond trustee appointed by the city for the purposes of this section.

(2) In the event that, for any reason, the amount of tax revenues made available pursuant to this article for the payment of principal and interest of the bonds will not be sufficient for that purpose at the time payment on principal, interest, or both, is required as to any one or more of those bonds, the city shall so notify the bond trustee. The bond trustee shall immediately communicate that information to the affected bondholder or bondholders and to the Controller.

(3) When the Controller receives notice from the trustee as described in paragraph (2), or the amount of tax revenues made available pursuant to this article for the payment of principal and interest of the bonds is not sufficient for that purpose at the time payment on principal, interest, or both, is required as to any one or more of those bonds, the Controller shall make an apportionment to the bond trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which that city is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2 of the Revenue and Taxation Code, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(4) A city shall be entitled to reimbursement, from tax revenues collected pursuant to this article, in an amount equal to the amount by which its allocation or allocations under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2 of the Revenue and Taxation Code are reduced pursuant to subdivision (c).

(b) This section shall not be construed to obligate the State of California to make any payment to a city from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a city, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a city in accordance with this section.

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 enhance the security for certain debt obligations currently being issued by cities and counties to fund the acquisition of property, it is necessary that this act take effect immediately.

CHAPTER 1178

An act to add Chapter 5.5 (commencing with Section 89600) to Part 55 of the Education Code, relating to the California State University, and making an appropriation therefor.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Chapter 5.5 (commencing with Section 89600) is added to Part 55 of the Education Code, to read:

CHAPTER 5.5. OPTIONAL RETIREMENT PROGRAM

Article 1. General Provisions

89600. This chapter shall be known and may be cited as the Optional Retirement Program.

89601. In order to encourage qualified teachers to enter and remain in service with the California State University, an optional retirement program is authorized by this chapter. The optional retirement program may be established on or after July 1, 1991, by a provision adopting this chapter in a memorandum of understanding which is entered into by the trustees pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code. However, no other provision of this chapter is subject to the control of any such memorandum of understanding. The optional retirement program shall become operative on the July 1 which immediately follows the receipt by the Public Employees' Retirement System of a notice of the adoption of this chapter and a copy of the memorandum of understanding.

89602. Under this optional retirement program eligible employees may purchase contracts or certificates providing retirement and death benefits, funded through annuities or investment fund options. The state and eligible employees electing this optional retirement program shall contribute toward the purchase of these contracts or certificates to the extent herein authorized or required. Benefits under the contracts or certificates are owned by the participants.

Article 2. Definitions

89610. Unless the context otherwise requires, the definitions set forth in this article govern construction of this chapter.

89611. "Benefit" means any monthly payment due a retirant, or other beneficiary, and includes lump-sum payments due on account of death.

89612. "Compensation" and "salary" have the same meaning as set forth in subdivisions (a) and (b) of Section 20022 of the Government Code.

89613. "Eligible employee" means all faculty and executive, managerial, and supervisory employees of the California State University system whose employment would qualify them for membership in the Public Employees' Retirement System, and who are initially appointed on or after the operative date of the optional retirement program.

89614. "Participant" means any person electing the optional retirement program.

Article 3. Administration and Participation

89620. (a) Only eligible employees of the California State University may elect to participate in the optional retirement program.

(b) Elections to participate in the optional retirement program shall be made as follows:

(1) Eligible employees shall irrevocably elect either to join the Public Employees' Retirement System in accordance with the provisions of law applicable thereto or to participate in the optional retirement program established pursuant to this chapter. This election is irrevocable and shall be made within 60 days of the date of employment. This election shall be in writing and filed with the California State University and the Public Employees' Retirement System. Notwithstanding Section 20303 of the Government Code, eligible employees shall not be subject to membership in the Public Employees' Retirement System until either they exercise the election to not participate in the optional retirement program or the 60-day period expires, whichever occurs first, whereupon the member contributions required by Sections 20600 and 20603 of the Government Code shall commence.

(2) An election of the optional retirement program by an eligible employee shall be irrevocable and shall be accompanied by an appropriate enrollment form, where required, for the issuance of contracts or certificates under the program.

89621. Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the Public Employees' Retirement System so long as he or she is employed in any eligible position by the California State University. In the event an optional retirement program participant assumes a position in public service for which the optional retirement program is not available, the employee shall, at that time, cease participation in the program and shall begin participation in the Public Employees' Retirement System.

Employees who elect to participate in the optional retirement program shall remain eligible to participate in the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751), Division 5, Title 2, Government Code) as if they were members of the Public Employees' Retirement System.

89622. (a) The state shall contribute to the optional retirement program an amount equal to the employer contribution of the trustees to the Public Employees' Retirement System, less the amount attributable to the unfunded actuarial obligation of the Public Employees' Retirement Fund, as determined by the Board of Administration of the Public Employees' Retirement System, which until June 30, 2016, shall instead be transmitted to the Public Employees' Retirement System. The Public Employees' Retirement System shall provide the necessary data processing services and shall charge the providers an administrative fee appropriate to pay the costs of providing those services. The amount currently attributable to the unfunded actuarial obligation of the Public Employees' Retirement Fund has been determined by the Board of Administration to be 2 percent. The Board of Administration shall, if the employer contribution rate varies from the employer contribution rate in effect on July 1, 1991, by at least plus or minus 5 percent, recalculate the amount attributable to the unfunded actuarial obligation. Thereafter, the Board of Administration shall, whenever the employer contribution rate varies from the employer contribution rate in effect on the effective date of the previous recalculation pursuant to this section by at least plus or minus 5 percent, recalculate the amount attributable to the unfunded actuarial obligation. The trustees and the providers of optional retirement programs shall provide the Public Employees' Retirement System with any personnel data needed for the recalculation.

(b) Participants shall contribute to the optional retirement program an amount equal to the contribution required of employees pursuant to Sections 20600 and 20603 of the Government Code.

(c) Contributions required by subdivision (b) may be made by a reduction in salary in accordance with any applicable provision of

the Internal Revenue Code. Payment of contributions authorized or required by this section shall be made by the Controller to the appropriate program administrator.

(d) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated from the General Fund monthly to the trustees the state's contribution prescribed in subdivision (a).

89623. No retirement, death, or other benefit shall be paid by the state or the trustees for services credited under the optional retirement program. The benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts or certificates.

CHAPTER 1179

An act to amend Section 7546.3 of the Business and Professions Code, relating to private patrol operators.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 7546.3 of the Business and Professions Code is amended to read:

7546.3. (a) Except as provided in subdivision (b), an employee of a licensee may be assigned to work with a temporary registration card which indicates completion of the course in the exercise of the power to arrest until the bureau issues a registration card or denies the application for registration. A temporary registration card shall in no event be valid for more than 120 days. However, the director may extend the expiration date beyond the 120 days at any time when there is an abnormal delay in processing applications for prospective security guards. For purposes of this section, the 120-day period shall commence on the date the applicant signs the application.

(b) An employee who has been convicted of a crime prior to applying for a position as a security guard shall not be issued a temporary registration card and shall not be assigned to work as a security guard until the bureau issues a permanent registration card. This subdivision shall apply only if the applicant for registration as a security guard has disclosed the conviction to the bureau on his or her application form, or if the fact of the conviction has come to the attention of the bureau through official court or other governmental documents. In no event shall the director, the department, the bureau, the chief, or the State of California be liable for any civil damages in the event of the issuance of a temporary registration where the applicant has falsified his or her application to conceal a

prior criminal conviction.

CHAPTER 1180

An act to amend Sections 547 and 550 of the Code of Civil Procedure, and to amend Section 12021 of, and to add Section 12076.1 to, the Penal Code, relating to firearms.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990.]

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

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

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

(a) (1) Any of the orders set forth in paragraphs (1), (4), and (5) of subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant, any of the orders set forth in paragraphs (2), (3), (5), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the other party on a finding only that physical or emotional harm would otherwise result to the other party or any person under the care, custody, or control of the other party or to any minor child of the parties or of the other party.

(2) Any of the orders set forth in paragraphs (2) and (3) of subdivision (a) of Section 4359 of the Civil Code. After notice and a hearing, the court may order the exclusion of one party from the common dwelling of both parties or from the dwelling of the other party on a finding only that physical or emotional harm would otherwise result to the other party or any person under the care, custody, or control of the other party or to any minor child of the parties or of the other party.

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

(c) An order that restitution be paid to the family or household

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

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

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

SEC. 2. Section 550 of the Code of Civil Procedure is amended to read:

550. (a) 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.

(b) Upon the receipt of a copy of an order predicated on paragraphs (2) and (3) of subdivision (a) of Section 4359 of the Civil Code and the subsequent proof of service thereof, the local law enforcement agency having jurisdiction over the residence of the plaintiff shall immediately notify the Department of Justice regarding the name, race, and date of birth of the person who is restrained, the date of the issuance of the order, and the duration of the order or its expiration date.

Failure to provide the Department of Justice with the race and date of birth of the person who is restrained, or to include the race and date of birth of the person who is restrained in the order, shall not invalidate the order.

(c) If a modification, extension, or termination of the order described in subdivision (b) is issued, the court shall immediately notify the Department of Justice.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, an employee of a local law enforcement agency or the Department of Justice, acting within the scope of his or her employment, if a person described in subdivision (g) of Section 12021 of the Penal Code unlawfully obtains, receives, purchases, or otherwise acquires a firearm and a person is injured by that firearm or a person who is otherwise entitled to receive a firearm is denied a firearm and either wrongful action is due to a failure of a court to provide the notification provided for in this subdivision.

SEC. 3. Section 12021 of the Penal Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

12021. (a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding the provisions of subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) Except as provided in subdivision (a), any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 241, 243, 244.5, 245, 245.5, 246.3, 247, 417, 417.2, 626 9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment. The court shall, on forms prescribed by the Department of Justice, notify the department of persons subject to this subdivision.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public

offense, which shall be punishable by imprisonment in the state prison or in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment. The court shall, on forms provided by the Department of Justice, notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment. The juvenile court shall, on forms prescribed by the Department of Justice, notify the department of persons subject to this subdivision. Notwithstanding any other provision of law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment; or

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both such punishments.

(g) Every person who obtains, receives, purchases, or otherwise acquires, or who attempts to obtain, receive, purchase, or otherwise acquire, a firearm knowing that he or she is subject to a restraining order issued pursuant to Section 545, Section 545.5, Section 546, and paragraph (2) of subdivision (a) of Section 547 of the Code of Civil Procedure is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both the fine and imprisonment.

SEC. 4. Section 12076.1 is added to the Penal Code, to read:

12076.1. As part of the charges set forth in subdivision (d) of Section 12076, the Department of Justice may include in the dealer's fee an additional charge equal to a sum sufficient to reimburse local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 550 of the Code of Civil Procedure created by the act which

also added this section.

SEC. 5. The Judicial Council shall revise the forms and instructions for applications for orders and orders granted pursuant to paragraphs (2) and (3) of subdivision (a) of Section 4359 of the Civil Code to include the race and the date of birth of the person restrained.

SEC. 6. This act shall only become operative if Assembly Bill 3593 of the 1989–90 Regular Session of the Legislature is also chaptered.

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.

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 States 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 1181

An act to amend Section 148 of the Penal Code, relating to crimes.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 148 of the Penal Code is amended to read:

148. (a) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other

than a firearm, from the person of, or immediate presence of, a public officer or peace officer is punishable by imprisonment in the county jail not to exceed one year, or in the state prison.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer is guilty of a felony.

(d) Every person who, during the commission of any offense described in subdivision (a), attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer is guilty of a public offense, punishable by imprisonment in a county jail not to exceed one year or in the state prison.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

(1) The officer's holster strap was unfastened by the defendant.

(2) The firearm was partially removed from the officer's holster by the defendant.

(3) The firearm safety was released by the defendant.

(4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

(5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

(6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person may not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction was committed against the same public officer, peace officer, or emergency medical technician. Multiple convictions under this section may take place when more than one public officer, peace officer, or emergency medical technician are victims.

SEC. 2. Section 148 of the Penal Code is amended to read:

148. (a) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both a fine and imprisonment.

(1) Whenever, in violation of this subdivision, the willful resistance of a person proximately causes death or serious bodily injury to a peace officer, the person violating the subdivision shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or both the fine and imprisonment, or by imprisonment in the county jail for not more than one year, or by a fine not more than one thousand dollars ($1,000), or by both a fine and imprisonment.

(2) For purposes of paragraph (1), the following facts shall be found by the trier of fact:

(A) That the peace officer's action was reasonable based on the facts or circumstances confronting the officer at the time.

(B) That the detention and arrest was lawful and there existed probable cause or reasonable cause to detain.

(C) That the person who willfully resisted, delayed, or obstructed any peace officer knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.

(3) Paragraph (1) shall not apply to conduct which occurs during labor picketing, demonstrations, or disturbing the peace.

(4) For purposes of this subdivision, "serious bodily injury" is defined in paragraph (5) of subdivision (f) of Section 243.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer is punishable by imprisonment in the county jail not to exceed one year, or in the state prison.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer is guilty of a felony.

(d) Every person who, during the commission of any offense described in subdivision (a), attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer is guilty of a public offense, punishable by imprisonment in a county jail not to exceed one year or in the state prison.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

(1) The officer's holster strap was unfastened by the defendant.

(2) The firearm was partially removed from the officer's holster by the defendant.

(3) The firearm safety was released by the defendant.

(4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

(5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

(6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person may not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction was committed against the same public officer, peace officer, or emergency medical technician. Multiple convictions under this section may take place when more than one public officer, peace officer, or emergency medical technician are victims.

SEC. 3. Section 2 of this bill incorporates amendments to Section 148 of the Penal Code proposed by both this bill and SB 2172. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 148 of the Penal Code, and (3) this bill is enacted after SB 2172, in which case Section 1 of this bill shall not become operative.

CHAPTER 1182

An act to amend Sections 4010.1, 4010.9, 4012, 4013, 4014, 4023.3, and 4036.5 of, to add Sections 4010.55, 4010.7, and 4010.85 to, to repeal Sections 4010.10 and 4016.5 of, to amend and repeal Section 4019.5 of, to add and repeal Sections 4020 and 4020.5 of, and to repeal and add Section 4010.8 of, the Health and Safety Code, relating to water systems.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 4010.1 of the Health and Safety Code is amended to read:

4010.1. As used in this chapter:

(a) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(b) "Department" means the State Department of Health Services.

(c) "Drinking water standards" means:

(1) Primary drinking water standards that specify maximum levels of contaminants which, in the judgment of the department, may have an adverse effect on the health of persons.

(2) Secondary drinking water standards that specify maximum contaminant levels which, in the judgment of the department, are necessary to protect the public welfare. Secondary drinking water standards may apply to any contaminant in drinking water which may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or which may otherwise adversely affect the public welfare. Regulations establishing secondary drinking water standards may vary according to geographic and other circumstances and may apply to any contaminant in drinking water which adversely affects the taste, odor, or appearance of the water when the standards are necessary to assure a supply of pure, wholesome, and potable water.

(3) The monitoring and reporting requirements as specified in regulations adopted by the department which pertain to maximum contaminant levels.

(d) "Maximum contaminant level" means the maximum permissible level of a contaminant in water.

(e) "Person" means an individual, corporation, company, association, partnership, municipality, public utility, or other public body or institution.

(f) "Public water system" means a system for the provision of piped water to the public for human consumption which has fifteen or more service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator which are used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(g) "Community water system" means a public water system which serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents.

(h) "Noncommunity water system" means a public water system which meets one of the following criteria:

(1) Serves at least 25 nonresident individuals daily at least 60 days of the year, but not more than 24 yearlong residents.

(2) Serves 15 or more service connections and any number of nonresident individuals at least 60 days of the year, but no yearlong residents.

(i) "Local health officer" means a local health officer appointed pursuant to Section 451 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 1155.5 to carry out the drinking water program.

(j) "Significant rise in the bacterial count of water" means a rise in the bacterial count of water which the department determines, by regulation, represents an immediate danger to the health of water users.

(k) "State small water system" means a system for the provision of piped water to the public for human consumption which serves at least five, but not more than 14, service connections and does not regularly serve more than an average of 25 individuals daily for more than 60 days out of the year.

(*l*) "User" means any person using water for domestic purposes. User does not include any person processing, selling, or serving water or operating a public water system.

(m) "Waterworks standards" means regulations adopted by the department which take cognizance of the latest available "Standards of Minimum Requirements for Safe Practice in the Production and Delivery of Water for Domestic Use" adopted by the California section of the American Water Works Association.

SEC. 2. Section 4010.55 is added to the Health and Safety Code, to read:

4010.55. The department shall be responsible for assuring that all public water systems are operated in compliance with the provisions of this chapter and any regulations adopted hereunder. Effective July 1, 1992, the department shall directly enforce the provisions of this chapter for all public water systems except as set forth in Section 4010.9.

SEC. 3. Section 4010.7 is added to the Health and Safety Code, to read:

4010.7. (a) The department may contract with a local health officer for enforcement of the provisions of this chapter for all or none of the community water systems and noncommunity water systems serving less than 200 service connections within the local jurisdiction, provided the local health officer demonstrates to the department that he or she has the capability to comply with the public water system program requirements established pursuant to subdivision (h) of Section 4023.3.

(b) A contract with a local health officer pursuant to this section shall not exceed three years and may be renewed or revoked upon mutual agreement of the department and the local health officer. The department may unilaterally revoke the contract if it makes a finding that the provisions of the contract have not been complied with by the local health officer. Notification to the local health officer and the board of supervisors and the opportunity for a public hearing shall be provided prior to a unilateral contract revocation by the department.

(c) A contract entered into with the local health officer pursuant to this section shall include reimbursement by the department to the local health officer of some or all of the costs incurred by the local health officer in carrying out the provisions of the contract.

(d) This section shall become effective on July 1, 1992.

SEC. 4. Section 4010.8 of the Health and Safety Code is repealed.

SEC. 5. Section 4010.8 is added to the Health and Safety Code, to read:

4010.8. This chapter shall not apply to state small water systems except as provided under this section:

(a) The department shall adopt regulations specifying minimum requirements for operation of a state small water system. The requirements may be less stringent than the requirements for public water systems as set forth in this chapter.

(b) The minimum requirements for state small water systems adopted by the department pursuant to subdivision (a) shall be enforced by the local health officer or a local health agency designated by the local health officer. In counties which do not have a local health officer, the requirements shall be enforced by the department. Local health agencies may adopt more stringent requirements for state small water systems than those specified in the state regulations.

(c) The reasonable costs of the local health officer in carrying out the requirements of this section may be recovered through the imposition of fees on state small water systems by the local governing body in accordance with Section 510.

SEC. 6. Section 4010.85 is added to the Health and Safety Code, to read:

4010.85. (a) The local health officer shall submit a report monthly to the department regarding the status of compliance with this chapter by the public water systems under the jurisdiction of the local health officer. The report shall be in a form and manner prescribed by the department.

(b) The department shall review the public water system program of the local health officer at least every three years to assure compliance with this chapter. A report of the findings of the review along with any recommendations of the department shall be provided to the local health officer and the board of supervisors.

SEC. 7. Section 4010.9 of the Health and Safety Code is amended to read:

4010.9. This chapter shall be enforced directly by the department for all public water systems, including state small water systems, in any county which does not have a local health officer, or contracts with the department for environmental health services pursuant to Section 1157 and elects not to enforce this chapter.

SEC. 8. Section 4010.10 of the Health and Safety Code is repealed.

SEC. 9. Section 4012 of the Health and Safety Code is amended to read:

4012. A public water system shall submit a technical report to the department as part of the permit application or when otherwise required by the department. This report may include, but not be limited to, detailed plans and specifications, water quality information, and physical descriptions of the existing or proposed system, and financial assurance information.

SEC. 10. Section 4013 of the Health and Safety Code is amended to read:

4013. Upon determination that an application submitted pursuant to this chapter is complete, the department shall make a thorough investigation of the proposed or existing plant, works, system, or water supply, and all other circumstances and conditions which it deems material, including any required financial assurance information.

SEC. 11. Section 4014 of the Health and Safety Code is amended to read:

4014. Following completion of the investigation and satisfaction of the requirements of subdivisions (a) and (b), the department shall issue or deny the permit. The department may impose such permit conditions, requirements for system improvements, and time schedules as it deems necessary to assure a reliable and adequate supply of water at all times which is pure, wholesome, potable, and does not endanger the health of consumers.

(a) No public water system which was not in existence on January 1, 1991, shall be granted a permit unless the system demonstrates to the department that the water supplier possesses adequate financial capability to assure the delivery of pure, wholesome, and potable drinking water. This section shall also apply to any change of ownership of a public water system which occurs after January 1, 1991.

(b) No permit under this chapter shall be issued to an association organized under Title 3 (commencing with Section 20000) of Division 3 of the Corporations Code. This section shall not apply to unincorporated associations which as of December 31, 1990, are holders of a permit issued under this chapter.

SEC. 12. Section 4016.5 of the Health and Safety Code is repealed.

SEC. 13. Section 4019.5 of the Health and Safety Code, as added by Chapter 462 of the Statutes of 1990, is amended to read:

4019.5. (a) Notwithstanding any other provision of law, effective July 1, 1990, each public water system with at least 200 service connections shall pay to the department an annual fee of fifty cents ($0.50) for each service connection it serves. The department shall adopt emergency regulations specifying the method of payment of the fee. It is the intent of the Legislature that this fee will generate three million six hundred thousand dollars ($3,600,000) annually.

(b) The emergency regulations adopted pursuant to this section shall be adopted by the department 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 shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, 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 department pursuant to this

section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the department.

(c) A public water system may collect a fee from its customers to recover the fee paid pursuant to subdivision (a).

(d) 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. 14. Section 4020 is added to the Health and Safety Code, to read:

4020. (a) There is hereby established in the General Fund the Small Water Systems Account. Each public water system serving fewer than 200 service connections shall pay an annual operating fee to the department in accordance with the regulations specified in subdivision (b), which shall be deposited in the Small Water Systems Account. Funds in the Small Water Systems Account shall be sufficient to cover the reasonable and necessary costs of the department to carry out the activities for public water systems with fewer than 200 service connections mandated by this chapter which are directly related to the issuance of permits, conduct of inspections and surveillance activities, taking of enforcement actions, and the costs of administering any contracts with local health officers.

(b) The department shall adopt regulations establishing a schedule of annual operating fees which shall be paid to the department by all community and noncommunity water systems of fewer than 200 service connections. The regulations shall specify the amount of the fee and the method of payment. In establishing the amount of the fee, the department shall, as directed in subdivision (c), charge each water system an amount that reflects the actual costs of the department in conducting the activities specified in subdivision (a) relative to that system.

(c) For the purposes of determining the fees provided for in subdivision (b), the department shall maintain a record of its actual costs for pursuing the activities specified in subdivision (a) relative to each system required to pay fees. To the extent feasible, the fee charged each system should be the same as or less than actual costs. In determining actual costs, the department may consider personnel requirements, materials, travel expenses, office overhead, and other pertinent direct and indirect expenses.

(d) Notwithstanding Section 6103 of the Government Code, each public water system operating under the permit issued pursuant to this chapter shall pay an annual operating fee to the department pursuant to this section. A public water system shall be permitted to collect a fee from its customers to recover the fee paid pursuant to this section.

(e) Fees collected by the department pursuant to this section shall not exceed a total of eight million two hundred fifty thousand dollars ($8,250,000) per year.

(f) This section shall become operative on July 1, 1992, and shall remain in effect until January 1, 1997, and as of that date is repealed,

unless a statute is enacted which is chaptered before January 1, 1997, which deletes or extends that date.

SEC. 15. Section 4020.5 is added to the Health and Safety Code, to read:

4020.5. (a) There is hereby established in the General Fund the Large Water Systems Account. Each public water system serving 200 or more service connections shall pay an annual operating fee to the department in accordance with the regulations specified in subdivision (b), which shall be deposited in the Large Water Systems Account. Funds in the Large Water Systems Account shall be sufficient to cover the reasonable and necessary costs of the department to carry out the activities for public water systems of 200 or more service connections mandated by this chapter which are directly related to the issuance of permits, conduct of inspections and surveillance activities, and taking of enforcement actions.

(b) The department shall adopt regulations establishing a schedule of annual operating fees which shall be paid to the department by all public water systems of 200 or more service connections. The regulations shall specify the amount of the fee and the method of payment. In establishing the amount of the fee, the department shall, as directed in subdivision (c), charge each water system an amount that reflects the actual costs of the department in conducting the activities specified in subdivision (a) relative to that system.

(c) For the purposes of determining the fees provided for in subdivision (b), the department shall maintain a record of its actual costs for pursuing the activities specified in subdivision (a) relative to each system required to pay fees. To the extent feasible, the fee charged each system should be the same as or less than actual costs. In determining actual costs, the department may consider personnel requirements, materials, travel expenses, office overhead, and other pertinent direct and indirect expenses.

(d) Notwithstanding Section 6103 of the Government Code, each public water system operating under the permit issued pursuant to this chapter shall pay an annual operating fee to the department pursuant to this section. A public water system shall be permitted to collect a fee from its customers to recover the fee paid pursuant to this section.

(e) Fees collected by the department pursuant to this section shall not exceed a total of four million two hundred fifty thousand dollars ($4,250,000).

(f) This section shall become operative on July 1, 1991, and shall remain in effect until January 1, 1997, and as of that date is repealed unless a statute is enacted which is chaptered before January 1, 1997, which deletes or extends that date.

SEC. 16. Section 4023.3 of the Health and Safety Code is amended to read:

4023.3. The department shall adopt rules and regulations it deems necessary to carry out the purposes of this chapter. The

regulations shall include, but not be limited to, the following:

(a) The monitoring of contaminants including the type of contaminant, frequency and method of sampling and testing and the reporting of results.

(b) The monitoring of unregulated contaminants for which drinking water standards have not been established by the department. The requirements shall be no less stringent than those promulgated pursuant to paragraph (2) of subsection (a) of Section 1445 of the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300j-4 (a)(2)). Until the time that the department adopts regulations regarding the monitoring of unregulated contaminants, the department may, by order, require any public water system which has been shown to contain detectable levels of any unregulated contaminants to conduct periodic water analyses in accordance with conditions specified by the department. The water analyses shall be reported on a quarterly basis unless the department finds that more or less frequent analysis is necessary.

(c) Requirements for the design, operation, and maintenance of public water systems, including, but not limited to, waterworks standards and the control of cross-connections, which the department determines are necessary to obtain, treat, and distribute a reliable and adequate supply of pure, wholesome, potable, and healthy water.

(d) Requirements for treatment, including disinfection of water supplies.

(e) Requirements for the filtration of surface water supplies at least as stringent as regulations promulgated pursuant to subparagraph (C) of paragraph (7) of subsection (b) of Section 1412 of the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-1 (b)(7)(C)).

(f) Requirements for notifying the public of the quality of the water delivered to consumers.

(g) Minimum acceptable financial assurances which a public water system shall be required to submit as a demonstration of its capability to provide for the ongoing operation, maintenance, and upgrading of the system, including compliance with monitoring and treatment requirements and contingencies. For privately owned systems not regulated by the California Public Utilities Commission, the financial assurance may be in the form of a trust fund, surety bond, letter of credit, insurance, or other equivalent financial arrangement acceptable to the department.

(h) Minimum program requirements for the conduct of the public water system program by a local health officer as set forth in this chapter. The requirements shall include, but not be limited to, the issuance of permits, surveillance and inspections, and the taking of enforcement actions.

SEC. 17. Section 4036.5 of the Health and Safety Code is amended to read:

4036.5. Notwithstanding Sections 4010.8 and 4010.9, the

department shall, after adequate notification of the local health officer, take action authorized by this chapter against a public water system under the jurisdiction of the local health officer if any of the following occur:

(a) The public water system has been in violation of any provision of this chapter or the regulations adopted hereunder, including any violation of compliance with drinking water standards or waterworks standards, for a period of at least 90 days within the previous year.

(b) A contaminant is present in, or likely to enter, a public water system and presents an imminent and substantial danger to the health of the users of the system.

SEC. 18. This act shall not cause or result in a reduction in existing state funding for state or local public health or environmental health programs which monitor and enforce drinking water standards.

SEC. 19. The department shall report to the Legislature by January 1, 1996, on the effectiveness of this legislation on the monitoring and enforcement of public water systems. The report shall specifically evaluate the compliance of community water systems serving less than 200 service connections and recommendations as to how those systems can best be brought into compliance. The report shall include recommendations as to whether enforcement should be continued as provided in this act or should be transferred to the department, and evaluations as to the need for consolidation of systems serving less than 200 service connections and recommendations on how to accomplish these consolidations. In addition, the report shall include an evaluation of the effectiveness of use of the annual operating fee with a recommendation in the report as to whether the fee should be revised, continued, or discontinued.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs because the local agency or school district has the authority pursuant to Section 4010.8 of the Health and Safety Code to levy service charges, fees, or assessments sufficient to pay those costs for the program or level of service mandated by this act.

Moreover, 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.

Also, 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 1183

An act to amend Section 1794.41 of the Civil Code, relating to warranties.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 1794.41 of the Civil Code is amended to read:

1794.41. (a) No service contract covering any motor vehicle, home appliance or home electronic product purchased for use in this state may be offered for sale or sold unless all of the following elements exist:

(1) The contract shall contain the disclosures specified in Section 1794.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.

(2) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer. If a service contract for a home appliance or a home electronic product is sold by means of a telephone solicitation, the seller may elect to satisfy the requirements of this paragraph by mailing or delivering the contract to the buyer not later than 30 days after the date of the sale of the contract.

(3) The contract is applicable only to items, costs, and time periods not covered by the express warranty. However, a service contract may run concurrently with or overlap an express warranty if (A) the contract covers items or costs not covered by the express warranty or (B) the contract provides relief to the purchaser not available under the express warranty, such as automatic replacement of a product where the express warranty only provides for repair.

(4) The contract shall be cancelable by the purchaser under the following conditions:

(A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of the contract, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract either within the first 60 days after

receipt of the contract, or with respect to a used motor vehicle without manufacturer warranties, home appliance, or home electronic product, within the first 30 days after receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.

(B) Unless the contract provides for a longer period for obtaining a full refund, after the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, after the first 30 days after the receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract. In addition, the seller may assess a cancellation or administrative fee, not to exceed 10 percent of the price of the service contract or twenty-five dollars ($25), whichever is less.

(C) If the purchase of the service contract was financed, the seller may make the refund payable to the purchaser, the assignee, or lender of record, or both.

(b) Nothing in this section shall apply to a home protection plan that is issued by a home protection company which is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(c) The amendments to this section made at the 1988 portion of the 1987–88 Regular Session of the Legislature that extend the application of this section to service contracts on home appliances and home electronic products shall become operative on July 1, 1989.

CHAPTER 1184

An act to amend Sections 10194.3 and 10195 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 10194.3 of the Insurance Code, as added by Assembly Bill 4282, is amended to read:

10194.3. (a) If a Medicare supplement policy excludes coverage for any item listed in the statement required by this section, the

cover page of the policy or certificate and the cover page of the outline of coverage shall contain the following statement in no less than 12-point upper case type:

SOME EXPENSES THIS POLICY DOES NOT COVER ARE: (indicate excluded coverage).

Custodial care, excess physician charges (above the amount Medicare pays), out-patient drugs, travel outside the United States, dental care or dentures, routine checkups or immunizations, foot care, eyeglasses, hearing aids, or chiropractic care.

Also, the cover page of the policy shall include, at least ¼ inch below that statement, the following statement, in no less than 12-point upper case type:

THERE MAY BE OTHER EXCLUSIONS IN THIS POLICY. PLEASE REFER TO PAGE (indicate page where other exclusions, if any, are described).

(b) Medicare supplement policies shall include a renewal or continuance provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provisions shall be appropriately captioned, and shall appear on the first page of the policy.

(c) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(d) A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import, shall include a definition of those terms and an explanation of the terms in its accompanying outline of coverage.

(e) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(f) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants

a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.

(g) (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

(h) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time application is made. Except for direct response policies, insurers shall obtain a written acknowledgment of receipt of the outline from the applicant.

Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not

identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.

(3) The cover page of every outline of coverage shall include the following:

(A) The following statement:

Caution: This policy may include coverage that totally or partly duplicates your other Medicare supplement insurance coverage.

(B) A disclosure of the loss ratio for the policy for the preceding year.

(C) The toll free telephone number of the department which consumers may call for information about the purchase of Medicare supplement insurance: 1-800-233-9045.

(4) The outline of coverage shall be in the form prescribed below:

[COMPANY NAME]
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE
AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

1. Read Your Policy Carefully—This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Medicare Supplement Coverage—Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services that are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine [delete if such coverage is provided].

3. A. [For agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

B. [for direct responses:]

[insert company's name] is not connected with Medicare.

4. [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare supplement coverage in the order stated herein. "Nothing" or "no coverage" shall be stated in the middle column if no coverage is provided for the benefit listed.

The order of statement shall be:]

DESCRIPTION	THIS POLICY PAYS [If the policy does not provide coverage for a listed benefit, the insurer shall state "no coverage" beside the benefit in the first column]	YOU PAY
I. Minimum Standards		
SERVICE		
PART A		
INPATIENT HOSPITAL		
SERVICES:		
Semi-private room & board		
Miscellaneous hospital services & supplies, such as drugs, x-rays, lab tests, and operating room		
BLOOD		
PART B		
MEDICAL EXPENSE:		
Services of a physician/outpatient services		
Medical supplies other than prescribed drugs		
BLOOD		
MISCELLANEOUS		
Immunosuppressive Drugs		

DESCRIPTION	THIS POLICY PAYS	YOU PAY
II. Additional Benefits		
PART A		
Part A deductible		
Private rooms		
In-hospital private nurses		
Skilled nursing facility care		
PARTS A & B		
Home health services		
PART B		
Part B deductible		
Medical charges in excess of medicare allowable expenses (percentage paid)		
OUT-OF-POCKET MAXIMUM		
PRESCRIPTION DRUGS		
MISCELLANEOUS		
Respite care benefits		
Expenses incurred in foreign country		
OTHER:		
TOTAL PREMIUM	$_____	

In addition to this outline of coverage, [insurance company name] will send an annual notice to you 30 days prior to the effective date of Medicare changes which will describe these changes and the changes in your Medicare supplement coverage.

5. A description of any policy provisions that exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in paragraph 4 above, including the following conspicuous statements:

(a) The chart summarizing Medicare benefits only briefly describes the benefits.

(b) The Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

6. An example showing how the policy would cover a two thousand dollar ($2,000) charge assuming the deductible has been met for a medical procedure which Medicare determines carries a one thousand five hundred dollar ($1,500) customary and reasonable charge. The statement shall be prominently displayed and in type no smaller than any other type on the page.

7. A description of policy provisions respecting renewability or

continuation of coverage, including any reservation of the rights to change premium.

8. The amount of premium for this policy.

(i) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare by reasons of age, which is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) shall notify insureds under the policy that it is not a Medicare supplement policy. The notice shall either be printed or attached to the first page of the outline of coverage or, if no outline of coverage is delivered, to the first page of the policy or certificate. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

(j) The commissioner may promulgate regulations to supplement subdivision (i) of the outline of coverage if they are determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not insurance policies to supplement Medicare.

SEC. 2. Section 10195 of the Insurance Code is amended to read:

10195. "Insurance policies to supplement Medicare" refers to disability insurance policies and nonprofit hospital service plan contracts which are designed primarily to supplement Medicare, or are advertised, marketed, or otherwise purported to be a supplement to Medicare and, which are issued on a group or individual basis.

(a) Insurance policies to supplement Medicare shall:

(1) Meet the minimum benefit standards as established by the Insurance Commissioner.

(2) Notwithstanding Section 10276, or any other provision of law, provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract at which time the applicant may return the contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no policy or contract had been issued. All premiums paid and any policy fee paid for the policy shall be fully refunded to the applicant by the insurer or entity in a timely manner.

(A) Each policy or certificate shall have a notice prominently printed in no less than 10-point upper case type, on the cover page of the policy or certificate or attached thereto, and on the cover page of the outline of coverage or attached thereto, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(B) For purposes of this section a timely manner shall be no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

(C) If the insurer or entity issuing the policy or certificate fails to refund all premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(3) Require insurers and plans to explain the relationship of the coverage of their policies to the benefits provided by Medicare.

(4) Not be limited to coverage exclusively for a single disease or affliction.

(5) If the policy does not cover custodial care in a skilled nursing care facility, dental care, eyeglasses, prescription drugs, or hearing aids, the cover page of the policy and the cover page of the outline of coverage required by subdivision (g) shall contain the statement in no less than 12-point upper case type: THIS POLICY DOES NOT COVER (indicate the specific coverage set forth above in this paragraph that is not covered by the policy). Also, the cover page of the policy shall include at least ¼ inch below that statement, the following statement, in no less than 12-point upper case type: THERE MAY BE OTHER EXCLUSIONS IN THIS POLICY, PLEASE REFER TO PAGE (indicate page where other exclusions are described, if other exclusions exist). The requirements of this paragraph apply on and after July 1, 1989.

(6) Until July 1, 1989, if the policy does not cover custodial care, the cover page of the outline of coverage required by subdivision (g) shall contain the statement in upper case type: THIS POLICY DOES NOT COVER CUSTODIAL CARE IN A SKILLED NURSING CARE FACILITY.

(7) Comply with the provisions of subdivision (b) of Section 10291.5 and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, regardless of the situs of the contract.

(b) The commissioner shall issue reasonable regulations to establish specific standards for policy provisions of insurance policies to supplement Medicare. These standards shall be in addition to and in accordance with applicable laws of this state, including Sections 10290 and 10291, subdivision (b) of Section 10291.5, and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, regardless of the situs of the contract.

(c) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person or class of persons insured or proposed for coverage under insurance policies or certificates to supplement Medicare.

(d) Notwithstanding any other provision of law, insurance policies to supplement Medicare shall not deny a claim for losses incurred

more than six months from the effective date of coverage for a preexisting condition. A policy shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) (1) Insurance policies or certificates to supplement Medicare shall return to policyholders benefits which have a minimum loss ratio of 60 percent for individual policies and 75 percent for group policies. The loss ratio shall be on the basis of incurred claims experience and earned premiums.

(2) The commissioner shall require that every entity providing insurance policies or certificates to supplement Medicare in this state maintain detailed experience data for policies subject to this section and that they make an annual filing with the commissioner disclosing the loss ratio for each policy form or certificate subject to this section. The annual filing shall, at a minimum, include rates, rating schedules, and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration. That information shall demonstrate that each policy form or certificate is in compliance with the applicable loss ratio standards.

(3) The commissioner shall assure that reserves are reasonable and based on sound actuarial principles with respect to the aggregate dollar amount of reserves for claims that are incurred but not yet paid and for claims that are incurred but not yet reported.

(4) Policy forms or certificates shall be deemed to comply with the purposes of this section if the expected losses in relation to premiums over the entire period for which the policy form is rated comply with the requirements of this section and either of the following applies:

(A) For policies or certificates which have been in force for three years or more, for the most recent year, the ratio of incurred losses to earned premiums is greater than or equal to the minimum loss ratios established by this section.

(B) For policies or certificates which have been in force for less than three years, the expected third-year loss ratio can be demonstrated to be greater than or equal to the minimum loss ratio.

(5) If the annual filing or other information received by the commissioner indicates that the actual loss ratio for a policy or certificate is less than the minimum loss ratio established by the commissioner, the commissioner shall require that the insurer or entity providing the insurance file and implement a corrective plan. This plan shall include the utilization of premium reductions, dividends, benefit increases, or any combination of these or other methods such that the minimum loss ratio can be reasonably expected to be achieved. Any corrective plan shall be reviewed and approved by the commissioner prior to implementation.

(6) If, in the opinion of the commissioner, a policy's or certificate's failure to meet the minimum loss ratio requirement is due to unusual

reserve fluctuations, economic conditions, or other nonrecurring conditions, the commissioner may exempt the policy or certificate from the need for a corrective plan for that year. Any exemption shall be in writing and specify the reasons for the granting of the exemption.

(7) If an insurer or other entity providing Medicare supplement insurance in this state fails to file and implement a corrective plan in a timely manner, the commissioner shall withdraw approval of the policy or certificate according to the procedures set forth in Section 10293. This remedy shall be in addition to any remedy available in this section or under other laws of this state. Any report, plan, exemption, or other document prepared pursuant to this subdivision shall be accessible to the public as a public record. A summary of reports, plans, exemptions, or other documents prepared pursuant to this subdivision shall be included in the commissioner's annual report to the Legislature in accordance with Section 911.5.

(8) The commissioner shall adopt regulations to implement this subdivision and shall amend existing regulations to conform to this subdivision on or before September 1, 1989.

(9) For the purposes of this subdivision, an insurance policy to supplement Medicare includes each specific insurance policy or certificate type for individual or group coverage, delivered or issued for delivery by any insurer or entity in this state. "Specific insurance policy or certificate type" includes a policy with all of the same provisions and coverage specifications.

(f) In addition to Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, and in order to provide for full and fair disclosure in the sale of Medicare supplemental policies and certificates, no insurance policy or certificate to supplement Medicare shall be delivered or issued for delivery in this state or elsewhere and no certificate shall be delivered pursuant to a group Medicare supplemental policy or certificate delivered or issued for delivery in the state unless an outline of coverage is delivered to the applicant at the time application is made.

Whenever any insurance policy or certificate to supplement Medicare is presented for examination or sale as defined in subdivision (e) of Section 10601, the prospective insured shall be provided an outline of coverage. Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(g) The commissioner shall prescribe the format and content of the outline of coverage required by subdivision (f). For purposes of this section, "format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of

coverage shall include all of the following:

(1) A description of the principal benefits and coverage provided in the policy.

(2) A statement of the exceptions, reductions, and limitations contained in the policy.

(3) An example showing how the policy would cover a two thousand dollar ($2,000) charge assuming the deductible has been met for a medical procedure which Medicare determines carries a one thousand five hundred dollar ($1,500) customary and reasonable charge. The statement shall be prominently displayed and in type no smaller than any other type on the page.

(4) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums.

(5) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(h) The commissioner may prescribe by regulation a standard form, and the contents of, an informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the information brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare by reason of age, but in no event later than the time of policy delivery.

(i) The commissioner may promulgate reasonable regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not insurance policies to supplement Medicare, for all accident and sickness insurance policies sold to persons eligible for Medicare by reason of age, other than insurance policies to supplement Medicare, disability income policies, basic, catastrophic, or major medical expense policies or single premium, nonrenewable policies.

(j) The commissioner may promulgate reasonable regulations to govern the full and fair disclosure of information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for Medicare by reason of age.

(k) This section applies to insurance provided to residents of this state under a group policy, in accordance with applicable laws of this state, including provisions of Sections 10290 and 10291, subdivision (b) of Section 10291.5, and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2 regardless of the situs of the contract.

This section shall not apply to policies issued to one or more

employers or labor organizations, or to the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization.

This section shall not apply to individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions which are inconsistent with the requirements of this section.

SEC. 3. Section 1 of this bill incorporates amendments to Section 10195 of, and the addition of Section 10194.3 to, the Insurance Code proposed by this bill and AB 4282. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 10195 of the Insurance Code, and AB 4282 adds Section 10194.3 to the Insurance Code and (3) this bill is enacted after AB 4282, in which case Section 10194.3 of the Insurance Code, as added by AB 4282, shall remain operative only until the operative date of this bill, at which time Section 1 of this bill shall become operative, and Section 2 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 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 1185

An act to add Sections 1861.15 and 1861.16 to the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 1861.15 is added to the Insurance Code, to read:

1861.15. (a) An insurer issuing policies as described in subdivision (a) of Section 660, shall, as a condition of obtaining and maintaining a certificate of authority to transact the business of

insurance in this state, offer to persons who qualify for a good driver discount pursuant to Sections 1861.02 and 1861.025, automobile liability coverage in the minimum financial responsibility coverage amounts specified in subdivision (a) of Section 16056 of the Vehicle Code, and sell that coverage to those who request it.

(b) In soliciting the issuance or renewal of a policy of automobile liability insurance, an insurer, broker, agent, or any other employee of the insurer shall disclose to persons eligible for a good driver discount the minimum financial responsibility coverage amounts required pursuant to Section 16056 of the Vehicle Code, and that the insurer is legally required to furnish coverage in those minimum amounts, if requested.

(c) Nothing in this section shall be construed to affect any obligation imposed on any insurer by law to offer and sell any other kind or amount of insurance.

(d) This section does not apply to any insurer that, on November 7, 1988, did not offer to sell a minimum financial responsibility policy as described in subdivision (a) and that did not write more than 1 percent of the private passenger automobile liability policies in effect on November 7, 1988.

SEC. 2. Section 1861.16 is added to the Insurance Code, to read:

1861.16. (a) An insurer issuing a policy as described in subdivision (a) of Section 660 by or through an insurance agent where a commission is paid, directly or indirectly, to that agent shall, when issuing a policy in the minimum financial responsibility coverage amount as required by Section 1861.15, pay a commission on the same terms and on the same percentage basis to that agent as for any higher amount of policy coverage sold by that agent. In no case shall the percentage amount of commission paid to that agent for a policy of minimum financial responsibility coverage be less than the percentage commission paid to that agent on any higher level of policy coverage issued by that insurer.

(b) An agent or representative representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good driver discount policy to a good driver from an insurer within that common ownership, management, or control group, which offers the lowest rates for that coverage. This requirement applies notwithstanding the underwriting guidelines of any of those insurers or the underwriting guidelines of the common ownership, management, or control group. Nothing in this subdivision shall require an insurer to offer and sell a good driver discount policy that the insurer would otherwise not be required to offer and sell in accordance with paragraph (3) of subdivision (b) of Section 1861.02.

This subdivision shall become operative on January 1, 1991.

(c) An insurer that is required by this section or Section 1861.02 to offer and sell good driver discount policies to good drivers to whom it did not sell those policies prior to November 8, 1988, due to driving safety record or vehicle type may file and, upon the approval

of the commissioner, implement an interim rating plan for those applicants until the rating plan required by subdivision (a) of Section 1861.02 is adopted, provided that the insurer has timely filed an automobile insurance rating plan in compliance with subdivision (a) of Section 1861.02, and that plan has not been approved. An insurer may file an interim plan prior to the operative date of subdivision (b).

The commissioner shall notify the public of any application by an insurer for an interim rating plan. The public notice shall meet the requirements of Section 1861.06. The application shall be deemed approved 60 days after public notice unless (1) a consumer or his or her representative requests a hearing within 45 days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing. If the commissioner grants a request for a hearing or determines on his or her own motion to hold a hearing on the application for an interim rating plan, but does not approve or disapprove the proposed interim rating plan within the later of 30 days from the date the commissioner grants a request or determines to hold the hearing or January 1, 1991, such interim rating plan may be used until such time as the commissioner issues a decision.

If an interim rate or proposed interim rate is greater than the rate ultimately approved, the insurer shall refund to its applicable policyholders, in proportion to the amount of premium paid by each, the difference between the total amount earned and the amount to which the insurer is entitled under the rate ultimately approved, together with interest at the rate of 10 percent per year. In lieu of a refund, the insurer may provide a credit to the policyholder if the amount due is less than three dollars ($3).

(d) Nothing contained in subdivision (b) or (c) shall be construed to expand, limit, or modify the requirements of subdivision (b) of Section 1861.02.

(e) A violation of this section by any insurer shall subject it to the penalties provided by Section 1861.14.

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 guarantee the availability of automobile liability insurance for those persons who require policy coverage in the minimum financial responsibility amounts required by law, it is necessary that this act take effect immediately.

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

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 1186

An act to amend Sections 17207, 17213, 17213.2, 17408, 17415, and 17606 of, to add Section 17214 to, and to repeal and add Section 17607 of, the Financial Code, relating to escrow agents.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 17207 of the Financial Code is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars ($625) for the first office or location and four hundred twenty-five dollars ($425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of such loss, theft, destruction, or surrender of certificate for replacement, two dollars ($2).

(c) For investigation services in connection with each application, one hundred dollars ($100), and for investigation services in connection with each additional office application, one hundred dollars ($100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner for the ensuing year, and of any deficit actually incurred or anticipated in the administration of this division in the year in which the assessment is made. If the special assessment on escrow licensees to provide sufficient funds to cover the regulatory and enforcement costs associated with the Escrow Law during the 1990–91 fiscal year proposed by the 1990–91 Budget Bill is enacted into law, then the assessment for fiscal year 1991–92 shall not exceed 125 percent of the total amount assessed for fiscal year 1990–91. If the special assessment is not enacted into law, then the assessment for fiscal year 1991–92 shall not exceed 150 percent of the total amount assessed for fiscal

year 1990–91. Commencing with the assessment for fiscal year 1992–93, the assessment shall not increase by more than 25 percent over the amount assessed in the prior year. The pro rata share shall be the proportion which a licensee's gross income from escrow operations bears to the aggregate gross income from escrow operations of all licensees as compiled by the commissioner. The pro rata share shall not include the costs of any examinations provided for in Section 17405.1, unless they cannot be collected from the company examined. If the pro rata assessment collected pursuant to this paragraph exceeds the actual costs and expenses incurred in the administration of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount assessed and levied against it, and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(3) In the levying and collection of the assessment, an escrow agent shall not be assessed for, nor be permitted to pay less than, three hundred fifty dollars ($350) per year, per location.

(4) If an escrow agent fails to pay the assessment on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If, after such an order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(5) On and after January 1, 1989, the commissioner may impose a one-time only supplemental assessment of up to one hundred fifty dollars ($150) per licensed location to defray any deficit in the administration of this division incurred or anticipated to be incurred prior to July 1, 1989. The commissioner or the commissioner's designee shall meet and confer with licensees or their representatives regarding the administration and enforcement of this division, including all resulting costs and expenses.

(f) Fifty dollars ($50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars ($25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

SEC. 2. Section 17213 of the Financial Code is amended to read:

17213. (a) An escrow agent shall not transact business pursuant to this division under any other name than that set forth in the articles of incorporation as filed with the commissioner.

(b) An escrow agent's license is not transferable or assignable. Further, no license may be acquired, either in whole or in part, through stock purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the consent of the commissioner. Prior to the transfer of 50 percent or more of the shares of an escrow agent, a new application for licensure shall be filed as required by Section 17201.

SEC. 3. Section 17213.2 of the Financial Code is amended to read:

17213.2. The commissioner may order a licensed escrow agent which opens a branch office or changes its business location or locations without first obtaining the approval of the commissioner to forfeit to the people of the state a sum of up to one hundred dollars ($100) for every day for the first 10 days and ten dollars ($10) for every day thereafter during which the branch office or changed location is maintained without authority.

SEC. 3.5. Section 17214 is added to the Financial Code, to read:

17214. (a) There is established in the Department of Corporations an Escrow Law Advisory Committee consisting of 11 members. The members shall consist of the commissioner or his or her designee; the chairman of the board and the immediate past chairman of the board for the Escrow Agents' Fidelity Corporation; the current president and the immediate past president of the Escrow Institute of California; a person selected by the commissioner to represent a different type of business ownership under this division; a person selected by the commissioner to represent a different type of business specialization; a person selected by the commissioner to represent small businesses operating pursuant to this division; a person selected by the commissioner to represent medium-sized businesses operating pursuant to this division; an attorney at law experienced in escrow matters selected by the commissioner; and a certified public accountant experienced in the escrow business selected by the commissioner.

The members appointed by the commissioner shall serve for a term of two years, except that of the members first appointed, five shall serve for a term of one year and five shall serve for a term of two years, as designated by the commissioner.

The committee shall meet at least quarterly. The commissioner or his or her designee shall chair the committee. All members shall serve without compensation or reimbursement for expenses.

Where the chairman of the board or the immediate past chairman of the board of the Escrow Agents' Fidelity Corporation is the same person, or is unable to serve on the advisory committee, then the commissioner after consultation with the board of directors of the Escrow Agent's Fidelity Corporation, shall choose a member of the board of directors to serve on the committee. Where the president

or past president of the Escrow Institute of California is the same person, or is unable to serve on the advisory committee, then the commissioner after consultation with the board of directors of the Escrow Institute of California, shall choose a member of the board of directors to serve on the committee.

(b) The purpose of the committee is to assist the commissioner in the implementation of the commissioner's duties under this chapter.

SEC. 4. Section 17408 of the Financial Code is amended to read:

17408. (a) If any person subject to this division fails to make any report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of said person to be thoroughly examined.

(b) The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner, or (2) to furnish any material information required by the commissioner to be included in the report. The amount of the penalty shall be one hundred dollars ($100) for each day for the first five days the report or information is overdue and, thereafter, five hundred dollars ($500) for each day the report or information is overdue.

(c) If, after an order has been made under subdivision (b), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted under that chapter.

(d) If the person fails to file a written request for a hearing within 30 days of the date of service of the order, the order imposing the penalty shall be deemed a final order of the commissioner, and the penalty shall be paid within five business days.

(e) If a hearing is requested, the penalty shall be paid within five business days after the effective date of any decision in the case ordering payment to be made.

SEC. 4.5. Section 17415 of the Financial Code is amended to read:

17415. (a) If the commissioner, as a result of any examination or from any report made to him, shall find that any person subject to this division is in an insolvent condition, is conducting escrow business in such an unsafe or injurious manner as to render further operations hazardous to the public or to customers, has permitted its tangible net worth to be lower than the minimum required by law, has failed to maintain its liquid assets in excess of current liabilities as set forth in Section 17210, or has failed to comply with the bonding requirements of Chapter 2 (commencing with Section 17200) of this division, the commissioner may, by an order addressed to and served by registered or certified mail or by personal service on such person and on any other person having in his possession or control any escrowed funds, trust funds or other property deposited in escrow

with said person, direct discontinuance of the disbursement of trust funds by the parties or any of them, the receipt of trust funds, the delivery or recording of documents received in escrow, or other business operations. No person having in his possession any of these funds or documents shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner in whole or in part, the person has been adjudged bankrupt, or pursuant to Chapter 6 (commencing with Section 17621) of this division the commissioner has assumed possession of the escrow agent.

(b) Within 10 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. Upon receipt of a request, the matter shall be set for hearing to commence within 15 business days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 30 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

SEC. 5. Section 17606 of the Financial Code is amended to read:

17606. The commissioner may immediately revoke the escrow agent's license if the licensee fails to comply with any order, unless the escrow agent secures a court order restraining the enforcement of the commissioner's order.

SEC. 6. Section 17607 of the Financial Code is repealed.

SEC. 7. Section 17607 is added to the Financial Code, to read:

17607. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court, which may include the commissioner, may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or

in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

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 1187

An act to amend Sections 253.2, 253.6, 263.2, 302, 304, 324, 335, 336, 414, 423, 428, 448, 452, 521, 522, 535, 536, 544, 554, and 618 of, and to add Section 307 to, the Streets and Highways Code, relating to highways.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 253.2 of the Streets and Highways Code is amended to read:

253.2. The California freeway and expressway system shall also include:

Route 1 from:

(a) Los Angeles-Ventura county line to Route 101 near El Rio.

(b) Route 101 near Las Cruces to Route 227 south of Oceano.

(c) Route 101 near San Luis Obispo to San Simeon.

(d) Carmel to the west city limits of Santa Cruz.

(e) The Higgins-Purisima Road to Route 280 south of San Francisco.

(f) Route 280 to the San Francisco county line.

(g) Route 101 near the southerly end of Marin Peninsula to the vicinity of Valley Ford.

(h) Route 128 near the mouth of the Navarro River to Route 101 near Leggett.

Route 2 from Glendale Boulevard in Los Angeles County to Route 210.

Route 3 from Route 299 near Weaverville to Route 5 near Yreka.

Route 4 from:

(a) Route 80 in Hercules to Route 99 near Stockton.

(b) Route 99 near Stockton to Route 65.

Route 12 from:

(a) Route 1 near Valley Ford to Route 101 at Santa Rosa.

(b) Route 101 near Santa Rosa to Melita Road near Santa Rosa.

(c) Route 29 in the vicinity of Napa to Route 80 near Cordelia.

(d) Route 80 near Fairfield to Route 99 near Lodi via Rio Vista.

(e) Route 99 near Lodi to Route 88 near Lockeford.

(f) Route 88 near Clements to Route 49 near San Andreas.

Route 13 from:

(a) Route 61 near the Oakland International Airport to Route 24.

(b) Route 80 to Route 61 near Emeryville.

Route 16 from:

(a) Route 505 to Route 5 near Woodland.

(b) Route 50 near Perkins to Route 49 near Drytown.

Route 17 from:

(a) Route 1 near Santa Cruz to Granite Creek Road near Scott's Valley.

(b) The south city limits of Los Gatos to Route 280 in San Jose.

Route 20 from Route 101 to Route 80 near Emigrant Gap.

SEC. 2. Section 253.6 of the Streets and Highways Code is amended to read:

253.6. The California freeway and expressway system shall also include:

Route 111 from:

(a) The international boundary south of Calexico to Route 78 near Brawley passing east of Heber.

(b) Route 78 near Brawley to Route 86 near Mecca via the north shore of the Salton Sea.

(c) San Rafael Drive in Palm Springs to Route 10 near Whitewater.

Route 113 from Route 80 near Davis to Route 99 near Tudor.

Route 116 from:

(a) Route 181 near Forestville to Route 101 near Cotati.

(b) Route 101 near Petaluma to Route 121 near Schellville.

Route 120 from:

(a) Route 5 near Mossdale to the west boundary of Yosemite National Park.

(b) The east boundary of Yosemite National Park to Route 395 near Mono Lake.

Route 127 from Route 15 near Baker to Route 190 near Death Valley Junction.

Route 128 from:

(a) The mouth of the Navarro River to Route 101 near Cloverdale.
(b) Route 101 to Route 29 at Calistoga.
(c) Route 121 to Route 113 near Davis.
Route 132 from:
(a) Route 580 west of Vernalis to Route 99 at Modesto.
(b) Route 99 to Route 65.

SEC. 3. Section 263.2 of the Streets and Highways Code is amended to read:

263.2. The state scenic highway system shall also include:
Route 1 from:
(a) Route 5 south of San Juan Capistrano to Route 19 near Long Beach.
(b) Route 187 near Santa Monica to Route 101 near El Rio.
(c) Route 101 at Las Cruces to Route 246 near Lompoc.
(d) Route 227 south of Oceano to Route 101 near Pismo Beach.
(e) Route 101 near San Luis Obispo to Route 35 near Daly City.
(f) Route 35 in San Francisco to Route 480 in San Francisco.
(g) Route 101 near Marin City to Route 101 near Leggett.
Route 2 from Route 210 in La Canada Flintridge to Route 138 via Wrightwood.
Route 3 from:
(a) Route 36 near Peanut to Route 299 near Douglas City.
(b) Route 299 near Weaverville to Montague.
Route 4 from:
(a) Route 160 near Antioch to Route 84 near Brentwood.
(b) Route 49 near Angels Camp to Route 89.

SEC. 4. Section 302 of the Streets and Highways Code is amended to read:

302. Route 2 is from:
(a) Route 1 near Santa Monica to Route 101 in Los Angeles.
(b) Route 101 in Los Angeles to Route 210 in La Canada Flintridge via Glendale.
(c) Route 210 in La Canada Flintridge to Route 138 via Wrightwood.

SEC. 5. Section 304 of the Streets and Highways Code is amended to read:

304. Route 4 is from:
(a) Route 80 in Hercules to Route 99 near Stockton via north of Concord and via Antioch.
(b) Route 99 near Stockton to Route 49 near Altaville via the vicinity of Copperopolis.
(c) Route 49 near Angels Camp to Route 89 via Murphys, Calaveras Big Trees, and Dorrington.

SEC. 6. Section 307 is added to the Streets and Highways Code, to read:

307. Route 7 is from a new International Border crossing near Calexico to Route 8 near El Centro.

SEC. 7. Section 324 of the Streets and Highways Code is amended to read:

324. Route 24 is from:

(a) Route 580 in Oakland to Route 680 in Walnut Creek.

(b) Route 680 in Walnut Creek to Route 4 near Pittsburg.

SEC. 8. Section 335 of the Streets and Highways Code is amended to read:

335. Route 35 is from:

(a) Route 17 at Summit Road to Route 92 via Skyline Boulevard.

(b) Route 92 to Route 280 at Bunker Hill Drive.

(c) Route 280 via Skyline Boulevard to Route 1 in San Francisco.

SEC. 9. Section 336 of the Streets and Highways Code is amended to read:

336. Route 36 is from:

(a) Route 101 near Alton to Route 395 near Johnsonville passing near Forest Glen via Red Bluff and Mineral, via the vicinity of Morgan Summit, and via Susanville.

(b) Route 139 north of Susanville to Route 395 near Termo.

SEC. 10. Section 414 of the Streets and Highways Code is amended to read:

414. Route 114 is from Route 101 in East Palo Alto to Route 84.

SEC. 11. Section 423 of the Streets and Highways Code is amended to read:

423. Route 123 is from Route 580 at San Pablo Avenue in Oakland to Route 80 in Richmond at Cutting Boulevard.

SEC. 12. Section 428 of the Streets and Highways Code is amended to read:

428. Route 128 is from:

(a) The mouth of the Navarro River to Route 101 near Cloverdale.

(b) Route 101 to Route 29 in Calistoga.

(c) Route 29 near Rutherford to Route 113 near Davis via Sage Canyon.

SEC. 13. Section 448 of the Streets and Highways Code is amended to read:

448. Route 148 is from:

(a) Route 5 near Sacramento to Route 143 south of Route 16.

(b) Route 143 south of Route 16 to Route 65.

SEC. 14. Section 452 of the Streets and Highways Code is amended to read:

452. Route 152 is from:

(a) Route 1 near Watsonville via Hecker Pass to Route 101 in Gilroy.

(b) Route 101 near Gilroy to Route 65 near Sharon via Pacheco Pass.

SEC. 15. Section 521 of the Streets and Highways Code is amended to read:

521. Route 221 is from Route 29 near Soscol Road to Route 121 at Imola Avenue in Napa.

SEC. 16. Section 522 of the Streets and Highways Code is amended to read:

522. Route 222 is from Route 101 near Ukiah easterly to East Side

Road in Talmage.

SEC. 17. Section 535 of the Streets and Highways Code is amended to read:

535. Route 235 is from Route 5 to Route 99 north of the Calaveras River in Stockton.

SEC. 18. Section 536 of the Streets and Highways Code is amended to read:

536. Route 236 is from Route 9 in Boulder Creek to Route 9 near Waterman Gap via Governor's Camp in Big Basin Redwoods State Park.

SEC. 19. Section 544 of the Streets and Highways Code is amended to read:

544. Route 244 is from Route 80 to Fair Oaks Boulevard near San Juan Avenue in Carmichael.

SEC. 20. Section 554 of the Streets and Highways Code is amended to read:

554. Route 254 is the Avenue of the Giants, comprising a portion of the former Redwood Highway through and connecting a number of state park units, from Route 101 near the Sylvandale interchange to one-tenth of a mile north of Jordan Creek south of Stafford.

SEC. 21. Section 618 of the Streets and Highways Code is amended to read:

618. Route 580 is from:

(a) Route 5 southwest of Vernalis to Route 80 in Oakland via the vicinity of Dublin and Hayward.

(b) Route 80 near Albany to Route 101 near San Rafael via the Richmond-San Rafael Bridge.

CHAPTER 1188

An act to amend Section 142.7 of the Labor Code, relating to occupational safety and health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 142.7 of the Labor Code is amended to read:

142.7. (a) On or before October 1, 1987, the board shall adopt an occupational safety and health standard concerning hazardous substance removal work, so as to protect most effectively the health and safety of employees. The standard shall include, but not be limited to, requirements for all of the following:

(1) Specific work practices.

(2) Certification of all employees engaged in hazardous substance removal-related work, except that no certification shall be required

for an employee whose only activity is the transportation of hazardous substances which are subject to the requirement for a certificate under Section 12804.1 of the Vehicle Code.

(3) Certification of supervisors with sufficient experience and authority to be responsible for hazardous substance removal work.

(4) Designation of a qualified person who shall be responsible for scheduling any air sampling, laboratory calibration of sampling equipment, evaluation of soil or other contaminated materials sampling results, and for conducting any equipment testing and evaluating the results of the tests.

(5) Requiring that a safety and health conference be held for all hazardous substance removal jobs before the start of actual work. The conference shall include representatives of the owner or contracting agency, the contractor, the employer, employees, and employee representatives, and shall include a discussion of the employer's safety and health program and the means, methods, devices, processes, practices, conditions, or operations which the employer intends to use in providing a safe and healthy place of employment.

(b) For purposes of this section, "hazardous substance removal work" means cleanup work at any of the following:

(1) A site where removal or remedial action is taken pursuant to either of the following:

(A) Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, regardless of whether the site is listed pursuant to Section 25356 of the Health and Safety Code.

(B) The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(2) A site where corrective action is taken pursuant to Section 25187 or 25200.10 of the Health and Safety Code or the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.).

(3) A site where cleanup of a discharge of a hazardous substance is required pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(4) A site where removal or remedial action is taken because a hazardous substance has been discharged or released in an amount that is reportable pursuant to Section 13271 of the Water Code or the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). "Hazardous substance removal work" does not include work related to a hazardous substance spill on a highway.

(c) Until the occupational safety and health standard required by subdivision (a) is adopted by the board and becomes effective, the occupational safety and health standard concerning hazardous substance removal work shall be the standard adopted by the federal government and codified in Section 1910.120 of Title 29 of the Code of Federal Regulations. In addition, before actual work is started on a hazardous substance removal job, a safety and health conference

shall be held that shall include the participants and involve a discussion of the subjects described in paragraph (5) of subdivision (a).

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

In order to ensure that occupational safety and health standards applicable to work at hazardous substance removal or remedial sites go into effect as soon as possible, thereby ensuring that the health and safety of workers are protected, it is necessary for this act to take effect immediately.

CHAPTER 1189

An act to add and repeal Section 769.75 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 769.75 is added to the Insurance Code, to read:

769.75. (a) An insurer shall not terminate a written agency contract to transact private passenger automobile insurance solely on the basis of the loss ratio experience developed by the private passenger automobile insurance business underwritten through that agency or solely because the insurance agency submitted applications to the insurer for automobile insurance pursuant to the good driver discount provisions of Section 1861.02.

(b) No insurer shall for the purpose of avoiding the prohibition on loss ratio terminations contained in subdivision (a) commit any of the following acts in a manner designed to impact only the agency or agencies in question and the business produced by them:

(1) Condition acceptance of private passenger automobile insurance from the agency in question upon the contemporaneous production of premiums from other lines of personal insurance from each of that agency's customers.

(2) Restrict the number of policies of private passenger automobile insurance produced by the agency in question, which are otherwise acceptable to it, by the imposition upon that agency of policy count quotas for policies that qualify as those for good drivers, as defined in Section 1861.20, for specific time frames.

(3) Reduce policy limits or eliminate policy forms available to the agency in question under the agency contract and prior practices pursuant to it.

(4) Substantially reduce the commission level from that established for the agency in question under the agency contract and any prior modifications to it.

The prohibitions contained in this subdivision shall run contemporaneously with the time period applicable to the loss ratio usage in subdivision (a).

(c) This section does not apply to an agent who is an employee of an insurer, or to an agent who by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others.

(d) As used in this section:

(1) "Loss ratio experience" means the ratio of net incurred losses, including those estimated incurred but not yet reported, and loss adjustment expenses, to net premiums earned, for a period of 36 calendar months next preceding the proposed date of the notice of termination.

(2) "Private passenger automobile insurance" means any of the types of insurance described in subdivision (a) of Section 660.

(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.

CHAPTER 1190

An act to amend Sections 2550 and 2551 of, and to add and repeal Section 2553.5 of, the Business and Professions Code, relating to registered dispensing opticians.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 2550 of the Business and Professions Code is amended to read:

2550. Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Division of Licensing of the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the Division of Allied Health Professions of the Medical Board of California.

SEC. 2. Section 2551 of the Business and Professions Code is amended to read:

2551. Individuals, corporations, and firms shall make application for registration and shall not engage in that business prior to being issued a certificate of registration. Application for that registration shall be on forms prescribed by the board, shall bear the signature of the individual, or general partners if a partnership, or the president or secretary if a corporation, and shall contain the name under which he or she, they or it proposes to do business and the business address. Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.

SEC. 3. Section 2553.5 is added to the Business and Professions Code, to read:

2553.5. (a) A registered dispensing optician may fit and adjust spectacle lenses and frames or take facial measurements in any of the following locations:

(1) A health facility as defined in Section 1250 of the Health and Safety Code for a person admitted to that facility or an employee of that facility.

(2) A business location as defined in subdivision (f) for an employee or independent contractor of the person operating the business at that location.

(3) Any certified place of business pursuant to Section 2553.

(b) A registered dispensing optician who fits and adjusts spectacle lenses at a health facility or business location shall provide to the patient written information disclosing the registrant's regular business address, certificate of registration number, phone number and the name and phone number, of the person designated by the licensee to receive complaints and inquiries, as specified in Section 2554.

(c) Nothing in this section shall be deemed to permit a registered dispensing optician or registered contact lens dispenser to fit or adjust contact lenses at a health facility or at a business location, as defined in subdivision (f).

(d) A registered spectacle lens dispenser may fit and adjust spectacle lenses at a health facility or at a business location, as defined in subdivision (f), only if he or she is in personal attendance at a certified place of business pursuant to Section 2553 at least 40 percent of his or her regular working hours each week.

(e) A registered spectacle lens dispenser who fits and adjusts spectacle lenses at a health facility or at a business location as defined in subdivision (f), other than on a temporary basis, shall maintain an emergency patient response system. This system shall consist of a telephone answering machine or service or a telephone paging device and the registered spectacle lens dispenser shall respond to patient inquiries received through the emergency system within 24 hours excluding weekends and holidays.

(f) "Business location" means the place at which any business

employs more than 25 persons at any single business address, but shall not include a health facility, as defined in Section 1250 of the Health and Safety Code or a certified place of business as specified in Section 2553.

(g) This section shall not affect the requirements regarding fitting and adjusting as set forth in Sections 2559.1 and 2560.

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.

CHAPTER 1191

An act to amend Section 1105 of, to add Section 6106.2 to, and to repeal and add Division 6 (commencing with Section 6101) of, the Commercial Code, relating to bulk sales.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 1105 of the Commercial Code is amended to read:

1105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2402.

Applicability of the division on leases. Sections 10105 and 10106.

Applicability of the division on bank deposits and collections. Section 4102.

Bulk sales subject to the division on bulk sales. Section 6103.

Applicability of the division on investment securities. Section 8106.

Perfection provisions of the division on secured transactions. Section 9103.

SEC. 2. Division 6 (commencing with Section 6101) of the Commercial Code, is repealed.

SEC. 3. Division 6 (commencing with Section 6101) is added to the Commercial Code, to read:

DIVISION 6. BULK SALES

6101. This division shall be known and may be cited as Uniform Commercial Code—Bulk Sales.

6102. (a) In this division, unless the context otherwise requires:

(1) "Assets" means the inventory and equipment that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in, or arising from, the seller's business and sold in connection with that inventory and equipment, but the term does not include any of the following:

(i) Fixtures (paragraph (a) of subdivision (1) of Section 9313) other than readily removable factory and office machines.

(ii) The lessee's interest in a lease of real property.

(iii) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

(2) "Auctioneer" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.

(3) "Bulk sale" means either of the following:

(i) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory and equipment, as measured by a value on the date of the bulk-sale agreement.

(ii) In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory and equipment, as measured by value on the date of the bulk-sale agreement.

(4) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of this state permit the holder of the claim to recover them in an action against the obligor.

(5) "Claimant" means a person holding a claim incurred in the seller's business other than any of the following:

(i) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay.

(ii) A claim for injury to an individual or to property, or for breach of warranty, unless all of the following are satisfied:

(A) A right of action for the claim has accrued.

(B) The claim has been asserted against the seller.

(C) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it.

(iii) A claim for taxes owing to a governmental unit, if both of the following are satisfied:

(A) A statute governing the enforcement of the claim permits or requires notice of the bulk sale to be given to the governmental unit in a manner other than by compliance with the requirements of this

division.

(B) Notice is given in accordance with the statute.

(6) "Creditor" means a claimant or other person holding a claim.

(7) (i) "Date of the bulk sale" means either of the following:

(A) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than 10 percent of the net proceeds is paid to or for the benefit of the seller.

(B) In all other cases, the later of the date on which either of the following occurs:

(I) More than 10 percent of the net contract price is paid to or for the benefit of the seller.

(II) More than 10 percent of the assets, as measured by value, are transferred to the buyer.

(ii) For purposes of this subdivision the following shall apply:

(A) Delivery of a negotiable instrument (subdivision (1) of Section 3104) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto.

(B) To the extent that the contract price is deposited in an escrow, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier.

(C) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to use the asset.

(8) "Date of the bulk-sale agreement" means either of the following:

(i) In the case of a sale by auction or conducted by a liquidator (subparagraph (i) of paragraph (3)), the date on which the seller engages the auctioneer or liquidator.

(ii) In all other cases, the date on which a bulk-sale agreement becomes enforceable between the buyer and the seller.

(9) "Debt" means liability on a claim.

(10) "Liquidator" means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.

(11) "Net contract price" means the new consideration the buyer is obligated to pay for the assets less each of the following:

(i) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset.

(ii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after

it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(12) "Net proceeds" means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller's behalf less each of the following:

(i) Commissions and reasonable expenses of the sale.

(ii) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset.

(iii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(13) A sale is "in the ordinary course of the seller's business" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

(14) "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(15) "Value" means fair market value.

(16) "Verified" means signed and sworn to or affirmed.

(b) The following definitions in other divisions apply to this division:

(1) "Buyer." Paragraph (a) of subdivision (1) of Section 2103.

(2) "Equipment." Subdivision (2) of Section 9109.

(3) "Inventory." Subdivision (4) of Section 9109.

(4) "Sale." Subdivision (1) of Section 2106.

(5) "Seller." Paragraph (d) of subdivision (1) of Section 2103.

(c) In addition, Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

6103. (a) Except as otherwise provided in subdivision (c), this division applies to a bulk sale if both of the following are satisfied:

(1) The seller's principal business is the sale of inventory from stock, including those who manufacture what they sell, or that of a restaurant owner.

(2) On the date of the bulk-sale agreement the seller is located in this state or, if the seller is located in a jurisdiction that is not a part of the United States, the seller's major executive office in the United

States is in this state.

(b) A seller is deemed to be located at its place of business. If a seller has more than one place of business, the seller is deemed located at its chief executive office.

(c) This division does not apply to any of the following:

(1) A transfer made to secure payment or performance of an obligation.

(2) A transfer of collateral to a secured party pursuant to Section 9503.

(3) A sale of collateral pursuant to Section 9504.

(4) Retention of collateral pursuant to Section 9505.

(5) A sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero.

(6) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee.

(7) A sale by an executor, administrator, receiver, trustee in bankruptcy, debtor in possession, or any public officer under judicial process.

(8) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization.

(9) A sale to a buyer whose principal place of business is in the United States and who satisfies each of the following:

(i) Not earlier than 21 days before the date of the bulk sale, (A) obtains from the seller a verified and dated list of claimants of whom the seller has notice three days before the seller sends or delivers the list to the buyer or (B) conducts a reasonable inquiry to discover the claimants.

(ii) Assumes in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or on the date the buyer completes the reasonable inquiry, as the case may be.

(iii) Is not insolvent after the assumption.

(iv) Records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided in Section 6105.

(10) A sale to a buyer whose principal place of business is in the United States and who satisfies each of the following:

(i) Assumes in full the debts that were incurred in the seller's business before the date of the bulk sale.

(ii) Is not insolvent after the assumption.

(iii) Records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided by Section 6105.

(11) A sale to a new organization that is organized to take over and continue the business of the seller and that has its principal place of business in the United States if each of the following conditions are

satisfied:

(i) The buyer assumes in full the debts that were incurred in the seller's business before the date of the bulk sale.

(ii) The seller receives nothing from the sale except an interest in the new organization that is subordinate to the claims against the organization arising from the assumption.

(iii) The buyer records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided in Section 6105.

(12) A sale of assets having either of the following:

(i) A value, net of liens and security interests, of less than ten thousand dollars ($10,000). If a debt is secured by assets and other property of the seller, the net value of the assets is determined by subtracting from their value an amount equal to the product of the debt multiplied by a fraction, the numerator of which is the value of the assets on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(ii) A value of more than five million dollars ($5,000,000) on the date of the bulk-sale agreement.

(13) A sale required by, and made pursuant to, statute.

(14) A transfer of personal property, if the personal property is leased back to the transferor immediately following the transfer and either there has been compliance with subdivision (h) of Section 3440.1 of the Civil Code or the transfer is exempt under subdivision (k) of Section 3440.1 of the Civil Code.

(15) A transfer which is subject to and complies with Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, if the transferee records and publishes notice of the transfer at least 12 business days before the transfer is to be consummated in the manner provided in Section 6105 and the notice contains the information set forth in paragraphs (1) to (4) inclusive, of subdivision (a) of Section 6105.

(16) A transfer of goods in a warehouse where a warehouse receipt has been issued therefor by a warehouseman (Section 7102) and a copy of the receipt is kept at the principal place of business of the warehouseman and at the warehouse in which the goods are stored.

(d) The notice under subparagraph (iv) of paragraph (9) of subdivision (c) shall state each of the following:

(1) That a sale that may constitute a bulk sale has been or will be made.

(2) The date or prospective date of the bulk sale.

(3) The individual, partnership, or corporate names and the addresses of the seller and buyer.

(4) The address to which inquiries about the sale may be made, if different from the seller's address.

(5) That the buyer has assumed or will assume in full the debts owed to claimants of whom the buyer has knowledge on the date the

buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.

(e) The notice under subparagraph (iii) of paragraph (10) of subdivision (c) and subparagraph (iii) of paragraph (11) of subdivision (c) shall state each of the following:

(1) That a sale that may constitute a bulk sale has been or will be made.

(2) The date or prospective date of the bulk sale.

(3) The individual, partnership, or corporate names and the addresses of the seller and buyer.

(4) The address to which inquiries about the sale may be made, if different from the seller's address.

(5) That the buyer has assumed or will assume the debts that were incurred in the seller's business before the date of the bulk sale.

(f) For purposes of paragraph (12) of subdivision (c), the value of assets is presumed to be equal to the price the buyer agrees to pay for the assets. However, in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the value of assets is presumed to be the amount the auctioneer or liquidator reasonably estimates the assets will bring at auction or upon liquidation.

6104. In a bulk sale as defined in subparagraph (ii) of paragraph (3) of subdivision (a) of Section 6102 the buyer shall do each of the following:

(a) Obtain from the seller a list of all business names and addresses used by the seller within three years before the date the list is sent or delivered to the buyer.

(b) Give notice of the bulk sale in accordance with Section 6105.

(c) Comply with Section 6106.2 if the bulk sale is within the scope of that section.

6105. In order to comply with subdivision (b) of Section 6104 each of the following shall be satisfied:

(a) The notice shall comply with each of the following:

(1) State that a bulk sale is about to be made.

(2) State the name and business address of the seller together with any other business name and address listed by the seller (subdivision (a) of Secton 6104) and the name and business address of the buyer.

(3) State the location and general description of the assets.

(4) State the place and the anticipated date of the bulk sale.

(5) State whether or not the bulk sale is subject to Section 6106.2 and, if so subject, the matters required by subdivision (f) of Section 6106.2.

(b) At least 12 business days before the date of the bulk sale, the notice shall be:

(1) Recorded in the office of the county recorder in the county or counties in this state in which the tangible assets are located and, if different, in the county in which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

(2) Published at least once in a newspaper of general circulation published in the judicial district in this state in which the tangible

assets are located and in the judicial district, if different, in which the seller is located (paragraph (2) of subdivision (a) of Section 6103), if in either case there is one, and if there is none, then in a newspaper of general circulation in the county in which the judicial district is located.

(3) Delivered or sent by registered or certified mail to the county tax collector in the county or counties in this state in which the tangible assets are located.

If the tangible assets are located in more than one judicial district in this state, the publication required in paragraph (2) shall be in a newspaper of general circulation published in the judicial district in this state in which a greater portion of the tangible assets are located, on the date the notice is published, than in any other judicial district in this state and, if different, in the judicial district in which the seller is located (paragraph (2) of subdivision (a) of Section 6103). As used in this subdivision, "business day" means any day other than a Saturday, Sunday, or day observed as a holiday by the state government.

6106.2. (a) This section applies only to a bulk sale where the consideration is two million dollars ($2,000,000) or less and is substantially all cash or an obligation of the buyer to pay cash in the future to the seller or a combination thereof.

(b) Upon every bulk sale subject to this section except one made by sale at auction or a sale or series of sales conducted by a liquidator on the seller's behalf, it is the duty of the buyer or, if the transaction is handled through an escrow, the escrow agent to apply the cash consideration in accordance with this section so far as necessary to pay those debts of the seller for which claims are due and payable on or before the date of the bulk sale and are received in writing on or prior to the date specified as the last date to file claims with the person designated in the notice to receive claims. This duty of the buyer or escrow agent runs to each claimant timely filing the claim.

(c) If the seller disputes whether a claim is due and payable on the date of the bulk sale or the amount of any claim, the buyer or escrow agent shall withhold from distribution the amount thereof, or the pro rata amount under subdivision (b) of Section 6106.4, and shall send a written notice to the claimant filing the claim on or before two business days after the distribution that the amount will be paid to the seller, or to the other claimants in accordance with subdivision (b) of Section 6106.4, as the case may be, unless attached within 25 days from the mailing of the notice. Any portion of the amount withheld which is not attached by the claimant within that time shall be paid by the buyer or escrow agent to the seller, or to the other claimants in accordance with subdivision (b) of Section 6106.4 if they have not been paid in full. An attachment of any amount so withheld shall be limited in its effect to the amount withheld for the attaching claimant and shall give the attaching claimant no greater priority or rights with respect to its claim than the claimant would have had if the claim had not been disputed. For purposes of this subdivision, a

claimant may obtain the issuance of an attachment for a claim which is less than five hundred dollars ($500) and which otherwise meets the requirements of Section 483.010 of the Code of Civil Procedure or which is a secured claim or lien of the type described in Section 483.010 of the Code of Civil Procedure. The remedy in this subdivision shall be in addition to any other remedies the claimant may have, including any right to attach the property intended to be transferred or any other property.

(d) If the cash consideration payable is not sufficient to pay all of the claims received in full, where no escrow has been established pursuant to Section 6106.4, the buyer shall follow the procedures specified in subdivisions (a) to (c), inclusive, of Section 6106.4, and the immunity established by paragraph (3) of subdivision (a) of that section shall apply to the buyer.

(e) The buyer or escrow agent shall, within 45 days after the buyer takes legal title to any of the goods, either pay to the extent of the cash consideration the claims filed and not disputed, or the applicable portion thereof to the extent of the cash consideration under subdivision (b) of Section 6106.4, or institute an action in interpleader pursuant to subdivision (b) of Section 386 of the Code of Civil Procedure and deposit the consideration with the clerk of the court pursuant to subdivision (c) of that section. The action shall be brought in the appropriate court in the county where the seller had its principal place of business in this state. Sections 386.1 and 386.6 of the Code of Civil Procedure shall apply in the action.

(f) The notice shall state, in addition to the matters required by Section 6105, the name and address of the person with whom claims may be filed and the last date for filing claims, which shall be the business day before the date stated in the notice pursuant to paragraph (4) of subdivision (a) of Section 6105. Claims shall be deemed timely filed only if actually received by the person designated in the notice to receive claims before the close of business on the day specified in the notice as the last date for filing claims.

(g) This section shall not be construed to release any security interest or other lien on the property which is the subject of the bulk sale except upon a voluntary release by the secured party or lienholder.

6106.4. In any case where the notice of a bulk sale subject to Section 6106.2 states that claims may be filed with an escrow agent, the intended buyer shall deposit with the escrow agent the full amount of the purchase price or consideration. If, at the time the bulk sale is otherwise ready to be consummated, the amount of cash deposited or agreed to be deposited at or prior to consummation in the escrow is insufficient to pay in full all of the claims filed with the escrow agent, the escrow agent shall do each of the following:

(a) (1) Delay the distribution of the consideration and the passing of legal title for a period of not less than 25 days nor more than 30 days from the date the notice required in paragraph (2) is mailed.

(2) Within five business days after the time the bulk sale would otherwise have been consummated, send a written notice to each claimant who has filed a claim stating the total consideration deposited or agreed to be deposited in the escrow, the name of each claimant who filed a claim against the escrow and the amount of each claim, the amount proposed to be paid to each claimant, the new date scheduled for the passing of legal title pursuant to paragraph (1) and the date on or before which distribution will be made to claimants which shall not be more than five days after the new date specified for the passing of legal title.

(3) If no written objection to the distribution described in the notice required by paragraph (2) is received by the escrow agent prior to the new date specified in the notice for the passing of legal title, the escrow agent shall not be liable to any person to whom the notice required by paragraph (2) was sent for any good faith error which may have been committed in allocating and distributing the consideration as stated in the notice.

(b) Distribute the consideration in the following order of priorities:

(1) All obligations owing to the United States, to the extent given priority by federal law.

(2) Secured claims, including statutory and judicial liens, to the extent of the consideration fairly attributable to the value of the properties securing the claims and in accordance with the priorities provided by law. A secured creditor shall participate in the distribution pursuant to this subdivision only if a release of lien is deposited by the secured creditor conditioned only upon receiving an amount equal to the distribution.

(3) Escrow and professional charges and brokers' fees attributable directly to the sale.

(4) Wage claims given priority by Section 1205 of the Code of Civil Procedure.

(5) All other tax claims.

(6) All other unsecured claims pro rata, including any deficiency claims of partially secured creditors.

(c) To the extent that an obligation of the buyer to pay cash in the future is a part of the consideration and the cash consideration is not sufficient to pay all claims filed in full, apply all principal and interest received on the obligation to the payment of claims in accordance with subdivision (b) until they are paid in full before making any payment to the buyer. In such case, the notice sent pursuant to subdivision (a) shall state the amount, terms, and due dates of the obligation and the portion of the claims expected to be paid thereby.

No funds may be drawn from the escrow, prior to the actual closing and completion of the escrow, for the payment, in whole or in part, of any commission, fee, or other consideration as compensation for a service that is contingent upon the performance of any act, condition, or instruction set forth in the escrow.

6107. (a) Except as provided in subdivision (c), and subject to

the limitation in subdivision (d), a buyer who fails to comply with the requirements of Section 6104 with respect to a claimant is liable to the claimant for damages in the amount of the claim, reduced by any amount that the claimant would not have realized if the buyer had complied.

(b) In an action under subdivision (a), the claimant has the burden of establishing the validity and amount of the claim, and the buyer has the burden of establishing the amount that the claimant would not have realized if the buyer had complied.

(c) A buyer who made a good faith and commercially reasonable effort to comply with the requirements of Section 6104 or to exclude the sale from the application of this division under subdivision (c) of Section 6103 is not liable to creditors for failure to comply with the requirements of Section 6104. The buyer has the burden of establishing the good faith and commercial reasonableness of the effort.

(d) In a single bulk sale the cumulative liability of the buyer for failure to comply with the requirements of Section 6104 may not exceed an amount equal to any of the following:

(1) If the assets consist only of inventory and equipment, twice the net contract price, less the amount of any part of the net contract price paid to or applied for the benefit of the seller or a creditor except to the extent that the payment or application is applied to a debt which is secured by the assets and which has been taken into consideration in determining the net contract price.

(2) If the assets include property other than inventory and equipment, twice the net value of the inventory and equipment less the amount of the portion of any part of the net contract price paid to or applied for the benefit of the seller or a creditor which is allocable to the inventory and equipment except to the extent that the payment or application is applied to a debt which is secured by the assets and which has been taken into consideration in determining the net contract price.

(e) For the purposes of paragraph (2) of subdivision (d), the "net value" of an asset is the value of the asset less each of the following:

(1) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset.

(2) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale. The portion of a part of the net contract price paid to or applied for the benefit of the seller or a creditor that is "allocable to the inventory and equipment" is the portion that bears

the same ratio to that part of the net contract price as the net value of the inventory and equipment bears to the net value of all of the assets.

(f) A payment made by the buyer to a person to whom the buyer is, or believes it is, liable under subdivision (a) reduces pro tanto the buyer's cumulative liability under subdivision (d).

(g) No action may be brought under subdivision (a) by or on behalf of a claimant whose claim is unliquidated or contingent.

(h) A buyer's failure to comply with the requirements of Section 6104 does not do any of the following:

(1) Impair the buyer's rights in or title to the assets.

(2) Render the sale ineffective, void, or voidable.

(3) Entitle a creditor to more than a single satisfaction of its claim.

(4) Create liability other than as provided in this division.

(i) Payment of the buyer's liability under subdivision (a) discharges pro tanto the seller's debt to the creditor.

(j) Unless otherwise agreed, a buyer has an immediate right of reimbursement from the seller for any amount paid to a creditor in partial or total satisfaction of the buyer's liability under subdivision (a).

6108. (a) Sections 6104, 6105, and 6107 apply to a bulk sale by auction and a bulk sale conducted by a liquidator on the seller's behalf with the following modifications:

(1) "Buyer" refers to auctioneer or liquidator, as the case may be.

(2) "Net contract price" refers to net proceeds of the auction or net proceeds of the sale, as the case may be.

(3) The written notice required under subdivision (a) of Section 6105 shall be accompanied by a statement that the sale is to be by auction or by liquidation, the name of the auctioneer or liquidator, and the time and place of the auction or the time and place on or after which the liquidator will begin to sell assets on the seller's behalf.

(4) In a single bulk sale the cumulative liability of the auctioneer or liquidator for failure to comply with the requirements of this section may not exceed the amount of the net proceeds of the sale allocable to inventory and equipment sold less the amount of the portion of any part of the net proceeds paid to or applied for the benefit of a creditor which is allocable to the inventory and equipment.

(b) A payment made by the auctioneer or liquidator to a person to whom the auctioneer or liquidator is, or believes it is, liable under this section reduces pro tanto the auctioneer's or liquidator's cumulative liability under paragraph (4) of subdivision (a).

(c) A person who buys at a bulk sale by auction or conducted by a liquidator need not comply with the requirements of Section 6104 and is not liable for the failure of an auctioneer or liquidator to comply with the requirements of this section.

6110. (a) Except as provided in subdivision (b), an action under this division against a buyer, auctioneer, or liquidator shall be

commenced within one year after the date of the bulk sale.

(b) If the buyer, auctioneer, or liquidator conceals the fact that the sale has occurred, the limitation is tolled and an action under this division may be commenced within the earlier of the following:

(1) One year after the person bringing the action discovers that the sale has occurred.

(2) One year after the person bringing the action should have discovered that the sale has occurred, but no later than two years after the date of the bulk sale. Complete noncompliance with the requirements of this division does not of itself constitute concealment.

6111. (a) Except to the extent provided in subdivision (b), this division shall apply to a bulk sale if the date of the bulk sale is on or after January 1, 1991.

(b) If the date of a bulk sale is on or after January 1, 1991, and the date of the bulk-sale agreement is before January 1, 1991, all of the following shall apply:

(1) Paragraph (2) of subdivision (a) of Section 6103 and subdivision (b) of Section 6103 shall not apply and this division shall apply only if the goods are located in this state.

(2) Subdivision (a) of Section 6104 shall not apply.

(3) The buyer is required under subdivision (b) of Section 6104 to give notice in accordance with Section 6107, as in effect on December 31, 1990, rather than Section 6105.

(4) The buyer is required under subdivision (c) of Section 6104 to comply with Section 6106, as in effect on December 31, 1990, if the bulk sale is within the scope of that section, rather than Section 6106.2.

(5) Section 6105 shall not apply, and Section 6107, as in effect on December 31, 1990, shall apply.

(6) Sections 6106.2 and 6106.4 shall not apply, and Sections 6106 and 6106.1, as in effect on December 31, 1990, shall apply.

(7) No action may be brought under this division, as in effect either before or on or after January 1, 1991, if the provisions of this division, as in effect on December 31, 1990, have been complied with.

SEC. 4. Section 6106.2 is added to the Commercial Code, to read:

6106.2. (a) This section applies only to a bulk sale where the consideration is two million dollars ($2,000,000) or less and is substantially all cash or an obligation of the buyer to pay cash in the future to the seller or a combination thereof.

(b) Upon every bulk sale subject to this section except one made by sale at auction or a sale or series of sales conducted by a liquidator on the seller's behalf, it is the duty of the buyer or, if the transaction is handled through an escrow, the escrow agent to apply the cash consideration in accordance with this section so far as necessary to pay those debts of the seller for which claims are due and payable on or before the date of the bulk sale and are received in writing on or prior to the date specified as the last date to file claims with the person designated in the notice to receive claims. This duty of the

buyer or escrow agent runs to each claimant timely filing the claim.

(c) If the seller disputes whether a claim is due and payable on the date of the bulk sale or the amount of any claim, the buyer or escrow agent shall withhold from distribution an amount equal to (1) 125 percent of the first seven thousand five hundred dollars ($7,500) of the claim, and (2) an amount equal to that portion of the claim in excess of the first seven thousand five hundred dollars ($7,500), or the pro rata amount under subdivision (b) of Section 6106.4, if applicable, and shall send a written notice to the claimant filing the claim on or before two business days after the distribution that the amount will be paid to the seller, or to the other claimants in accordance with subdivision (b) of Section 6106.4, as the case may be, unless attached within 25 days from the mailing of the notice. Any portion of the amount withheld which is not attached by the claimant within that time shall be paid by the buyer or escrow agent to the seller, or to the other claimants in accordance with subdivision (b) of Section 6106.4 if they have not been paid in full. An attachment of any amount so withheld shall be limited in its effect to the amount withheld for the attaching claimant and shall give the attaching claimant no greater priority or rights with respect to its claim than the claimant would have had if the claim had not been disputed. For purposes of this subdivision, a claimant may obtain the issuance of an attachment for a claim which is less than five hundred dollars ($500) and which otherwise meets the requirements of Section 483.010 of the Code of Civil Procedure or which is a secured claim or lien of the type described in Section 483.010 of the Code of Civil Procedure. The remedy in this subdivision shall be in addition to any other remedies the claimant may have, including any right to attach the property intended to be transferred or any other property.

(d) If the cash consideration payable is not sufficient to pay all of the claims received in full, where no escrow has been established pursuant to Section 6106.4, the buyer shall follow the procedures specified in subdivisions (a) to (c), inclusive, of Section 6106.4, and the immunity established by paragraph (3) of subdivision (a) of that section shall apply to the buyer.

(e) The buyer or escrow agent shall, within 45 days after the buyer takes legal title to any of the goods, either pay to the extent of the cash consideration the claims filed and not disputed, or the applicable portion thereof to the extent of the cash consideration under subdivision (b) of Section 6106.4, or institute an action in interpleader pursuant to subdivision (b) of Section 386 of the Code of Civil Procedure and deposit the consideration with the clerk of the court pursuant to subdivision (c) of that section. The action shall be brought in the appropriate court in the county where the seller had its principal place of business in this state. Sections 386.1 and 386.6 of the Code of Civil Procedure shall apply in the action.

(f) The notice shall state, in addition to the matters required by Section 6105, the name and address of the person with whom claims may be filed and the last date for filing claims, which shall be the

business day before the date stated in the notice pursuant to paragraph (4) of subdivision (a) of Section 6105. Claims shall be deemed timely filed only if actually received by the person designated in the notice to receive claims before the close of business on the day specified in the notice as the last date for filing claims.

(g) This section shall not be construed to release any security interest or other lien on the property which is the subject of the bulk sale except upon a voluntary release by the secured party or lienholder.

SEC. 5. Section 4 of this bill incorporates changes proposed by Senate Bill No. 2123, and it shall become operative only if Senate Bill No. 2123 is enacted, and as enacted amends Section 6106 of the Commercial Code, and this bill is enacted last, in which case Section 6106.2 of the Commercial Code, as added by Section 3 of this bill, shall not become operative.

CHAPTER 1192

An act to amend Sections 11791, 12999.4, and 12999.5 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 11791 of the Food and Agricultural Code is amended to read:

11791. It is unlawful for any person subject to this division to do any of the following:

(a) Make any false or fraudulent claim, or misrepresent the effects of material or method to be applied, apply any worthless or improper material, or otherwise engage in any unfair practices.

(b) Operate in a faulty, careless, or negligent manner.

(c) Refuse or neglect to comply with this division, or any regulation issued pursuant to this division, or any lawful order of the commissioner or the director.

(d) Refuse or neglect to keep and maintain the records which are required by this division, or to make reports when and as required.

SEC. 2. Section 12999.4 of the Food and Agricultural Code is amended to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Section 12671 or Section 12993 of not more than five thousand dollars ($5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review

the director's evidence and a right to present evidence on his or her own behalf.

(c) Review of the decision of the director may be sought by the person against whom the penalty was levied within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Food and Agriculture Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 3. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the commissioner's evidence and a right to present evidence on his or her own behalf.

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal and shall include a copy of the commissioner's decision. The applicant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted,

written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the fine levied, or reverse the decision of the commissioner. A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 4. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the commissioner's evidence and a right to present evidence on his or her own behalf.

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state

the grounds for the appeal and shall include a copy of the commissioner's decision. The applicant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the fine levied, or reverse the decision of the commissioner. A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(e) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 5. Section 4 of this bill incorporates amendments to Section 12999.5 of the Food and Agricultural Code proposed by both this bill and AB 3550. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 12999.5 of the Food and Agricultural Code, and (3)

this bill is enacted after AB 3550, in which case Section 3 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1193

An act to add and repeal Chapter 3.9 (commencing with Section 10790) of Part 2 of Division 9 of the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

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

(a) Under current federal and state law, two separate application procedures are required for assistance under the Aid to Families with Dependent Children program and the Food Stamp Program. Each application procedure has separate eligibility requirements which include application forms, separate methods for determining available income and resources, and separate reporting processes which are subsequently required for identifying changes in income, resources, or family composition.

(b) The excessive paperwork and bureaucratic processing created by separate application procedures for the Aid to Families with Dependent Children program and the Food Stamp Program have created a significant burden on both the families and individuals who apply for assistance as well as the eligibility workers who determine eligibility for California's public assistance programs.

(c) The excessive paperwork and bureaucratic processing which result from separate application processes for the Aid to Families with Dependent Children program and Food Stamp Program continue to require expenditures at all levels of government which are an imprudent use of limited government resources and create such administrative complexity that eligibility errors have become inevitable.

(d) Needy families and individuals who apply for public assistance would be better served and efficiencies could be achieved in the overall administration of California's public assistance programs through a consolidated eligibility determination process for aid to families with dependent children and food stamps.

(e) It is in the interest of the State of California to conduct a demonstration program in a limited number of counties where the eligibility determination process for aid to families with dependent chidren and food stamps is consolidated.

SEC. 2. Chapter 3.9 (commencing with Section 10790) is added to Part 2 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 3.9. CONSOLIDATED PUBLIC ASSISTANCE ELIGIBILITY DETERMINATION DEMONSTRATION PROGRAM

10790. (a) The director, in consultation with the County Welfare Directors Association and at least one advocate for welfare recipients, may establish, within the Aid to Families with Dependent Children program, Chapter 2 (commencing with Section 11200) of Part 3 and the Food Stamp Program under Chapter 10 (commencing with Section 18900) of Part 6, the Consolidated Public Assistance Eligibility Determination Demonstration Project in not more than five counties, pursuant to the concurrence of the county board of supervisors of each participating county.

(b) (1) The director may, by formal order, waive the enforcement of those regulations and standards necessary to implement the project with federal approval, in order to enable the five participating counties to implement the demonstration project.

(2) The order establishing the waiver authorized by paragraph (1) shall meet all of the following requirements:

(A) It shall provide alternative methods and procedures of eligibility administration.

(B) It shall not conflict with the basic purposes or coverage provided by law.

(C) It shall not be more restrictive than, or reduce the amount of benefits that any AFDC recipient and any food stamp recipient would otherwise be entitled to receive under, the AFDC and food stamp programs.

(D) Applications for, and restorations of, aid shall be processed in the shorter of the time periods required for the AFDC and food stamp programs, when differences exist between the two programs.

(E) It shall not be general in scope and shall apply only to the

project authorized by this section.

(F) It shall not exceed three years in duration.

(3) The order establishing the waiver authorized by paragraph (1) shall take effect only if all of the following conditions have been met:

(A) The appropriate federal agencies have agreed, on or before December 31, 1991, to approve the demonstration project and to waive those federal requirements which are necessary for waiver under the project.

(B) Each participating county has completed a comprehensive plan pursuant to Section 10792 which includes an analysis of the expected costs and savings.

(C) The county plan has been published in a newspaper of general circulation in each participating county and filed with the policy and fiscal committees of each house of the Legislature.

(c) Applicants and recipients under this chapter shall be entitled to the same rights and fair hearings and appeals as those to which they would otherwise be entitled under the AFDC program, Chapter 2 (commencing with Section 11200) of Part 3 and the Food Stamp Program under Chapter 10 (commencing with Section 18900) of Part 6.

(d) To the extent permitted by federal law and regulations, the department shall select demonstration programs from northern, southern, and central counties of California, one of which shall be an urban county.

(e) Each participating county shall submit an annual report to the department on the demonstration project authorized by this section.

(f) (1) The department shall, within nine months after the termination of the project authorized by this section, submit to the appropriate committees of the Legislature a report containing an evaluation of the demonstration project authorized by this section.

(2) The report required by paragraph (1) shall address, but need not be limited to, all of the following:

(A) AFDC and food stamp eligibility staff time and related administrative costs.

(B) Changes in program benefits received by AFDC families and any other impacts on AFDC benefit recipients.

(C) AFDC benefit and food stamp eligibility determination error rates in the participating counties prior to, and during, the implementation of the demonstration project.

10791. Counties which are selected to operate demonstration programs pursuant to this chapter shall be exempt from quality control requirements in the Aid to Families with Dependent Children and Food Stamp programs, consistent with existing federal law.

10792. County welfare departments which request designation as a demonstration county shall develop a demonstration proposal which, at a minimum, addresses all of the following:

(a) Defining the demographics of the county's aid to families with

dependent children and food stamp caseloads.

(b) Outlining the manner in which the consolidated eligibility determination process would be administered by the county department.

(c) Estimating costs and savings.

(d) Identifying impacts and costs on existing computer support.

(e) Specifying how the demonstration program will be evaluated.

(f) Any impacts on AFDC and food stamp program recipients.

10793. In selecting demonstration counties, the department shall evaluate all proposals on the basis of completeness, the strength of the proposal in addressing the factors set forth in Section 10792, and the ability of the county to develop a valid test of the consolidated process.

10794. (a) Costs associated with state administration of the demonstration project shall be included in a subsequent budget bill.

(b) Any county which implements a demonstration project under this chapter shall operate the project in keeping with the county cost control plan for county administration of welfare programs.

10795. This chapter 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.

CHAPTER 1194

An act to amend Section 830.5 of the Penal Code, relating to peace officers.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. 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, suspend, 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 or designee to maintain his or

her eligibility to carry concealable firearms off duty. Failure to maintain quarterly qualifications by an officer or designee with any concealable firearms carried off duty shall constitute good cause to suspend or revoke that person's right to carry firearms off duty.

(e) The Department of Corrections shall allow reasonable access to its ranges for officers and designees of either department to qualify to carry concealable firearms off duty. The time spent on the range for purposes of meeting the qualification requirements shall be the person's own time during the person's off-duty hours.

(f) The Director of Corrections shall promulgate regulations consistent with this section.

CHAPTER 1195

An act to add Section 8286 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. (a) The Legislature hereby finds and declares that it is in the public interest to eliminate barriers that have traditionally kept women- and minority-owned business enterprises and small businesses from fully participating in the procurement practices of the electrical, gas, and telephone corporations in this state. Those barriers exist in many forms, ranging from slow payments for completed work, rigid credit and financial criteria, and extensive bonding requirements.

SEC. 2. Section 8286 is added to the Public Utilities Code, to read:

8286. In order to facilitate the participation of women-owned businesses, minority-owned businesses, and small businesses in contract procurement, any corporation subject to this article may consider the following measures to include those businesses in all phases of their contracting:

(a) Timely or progressive payments to those businesses.

(b) An amendment of the performance bond requirements when past performance within a specified area of business justifies that consideration.

(c) The provision of assistance to those businesses by securing contract payments to those businesses with letters of credit, negotiable securities, or other financing arrangements or measures.

CHAPTER 1196

An act to add Section 505.2 to, to add Chapter 2.5 (commencing with Section 11400) to Division 5 of, and to repeal Section 26 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 26 of the Vehicle Code is repealed.

SEC. 2. Section 505.2 is added to the Vehicle Code, to read:

505.2. (a) A "registration service" is a person engaged in the business of soliciting or receiving any application for the registration, renewal of registration, or transfer of registration or ownership of any vehicle of a type subject to registration under this code, or for a driver's license, or of transmitting or presenting any of those documents to the department, when any compensation is solicited or received for the service. "Registration service" includes, but is not limited to, a person who, for compensation, processes registration documents, conducts lien sales, or processes vehicle dismantling documents.

(b) "Registration service" does not include any of the following:

(1) A person performing registration services on a vehicle acquired by that person for his or her own personal use or for use in the regular course of that person's business.

(2) A person who solicits applications for or sells, for compensation, nonresident permits for the operation of vehicles within this state.

(3) An employee of a single dealer or dismantler who performs registration services for vehicles acquired by, consigned to, or sold by that dealer or dismantler.

(4) A motor club, as defined in Section 12142 of the Insurance Code.

(5) A person who performs registration services exclusively for vehicles registered pursuant to Article 9.5 (commencing with Section 5301) of Chapter 1 of Division 3 or Article 4 (commencing with Section 8050) of Chapter 4 of Division 3.

(6) A common carrier acting in the regular course of its business in transmitting applications.

SEC. 3. Chapter 2.5 (commencing with Section 11400) is added to Division 5 of the Vehicle Code, to read:

CHAPTER 2.5. REGISTRATION SERVICES

11400. No person shall act as a registration service, engage in the business of soliciting or receiving any application for the registration, renewal of registration, or transfer of registration or ownership of

any vehicle of a type subject to registration under this code, or for a driver's license, or transmit or present any of those documents to the department, if any compensation is solicited or received for the service, without a license or temporary permit issued by the department pursuant to this chapter, or if that license or temporary permit has expired or been canceled, suspended, or revoked, or the terms and conditions of an agreement entered into pursuant to Section 11408 have not been fulfilled.

11401. An applicant for a license to be a registration service shall submit an application to the department upon the appropriate form for a license and a distinguishing number. The applicant shall also include with the application any information as to the applicant's character, honesty, integrity, and reputation which the department requires. The application shall include, but not be limited to, all of the following:

(a) The type of ownership, whether an individual, a partnership, or a corporation. If the applicant is a partnership, the names and titles of all partners, except limited partners, shall be furnished. If the applicant is a corporation, the names and titles of all controlling stockholders, directors, and officers who, by reason of the facts and circumstances, could direct, control, or manage the business of the registration service shall be furnished.

(b) The name and address of the business, including street, city, and postal zip code of the principal place of business and any branch location.

(c) A personal history statement and fingerprints from any person required to be identified in subdivision (a), containing the information the department requires.

(d) The name, address, driver's license number, and a brief physical description of all persons employed or otherwise engaged by the registration service to perform registration work.

(e) A bond executed by an admitted surety insurer, approved as to form by the Attorney General, to cover any loss to the public or the State of California arising out of the operation of the registration service.

(f) A nonrefundable application fee, as specified in Section 11409.

11402. (a) The amount of the bond required by subdivision (e) of Section 11401 is five thousand dollars ($5,000). Liability under the bond shall remain at that amount.

(b) If the amount of the liability under the bond is decreased, or there is outstanding a final court judgment arising out of a violation of any provision of this code for which the registration service is liable, the license of the registration service shall be automatically suspended. In order to reinstate the license, the registration service shall either file an additional bond or restore the bond on file to the original amount, or shall satisfy the outstanding judgment for which the registration service and surety are liable.

(c) The bond shall remain in effect for three years after cessation of business of the registration service.

11403. (a) A license to conduct a registration service, or a renewal of that license, shall not be issued to any applicant unless the applicant files with the department an instrument, in writing, in which the applicant appoints the director as the agent of the applicant upon whom all process may be served in any action which may be commenced against the applicant arising out of any claim for damages by any person by reason of the violation by the applicant of any provision of this code in connection with the registration service or any condition of the registration service's bond.

(b) The applicant shall agree in the instrument that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in that case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, is of the same force and effect as if served upon the applicant personally.

(c) The applicant shall further agree, in writing, that the agency created by the instrument shall continue during the period covered by any license that may be issued and so long thereafter as the applicant may be required to answer in damages for a violation of this code in connection with the registration service or any condition of the bond.

(d) The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public.

(e) If the registration service is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars ($5) shall also be paid to the director at the time of service of the copy of the summons and complaint.

(f) Service on the director is a sufficient service on the registration service if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the registration service. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the registration service's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt.

(g) The director shall keep a record of all process served on the director pursuant to this section, which shall show the day and hour of service, and shall retain the summons and complaint so served on file.

(h) If the registration service is served with process by service upon the director, the registration service has 30 days from the date of that service within which to answer any complaint or other pleading which may be filed in the cause.

(i) For purposes of venue, if the registration service is served with process by service upon the director, the service is deemed to have

been made upon the registration service in the county in which the registration service has, or last had, its principal place of business.

11404. (a) Until the department determines that the applicant meets all of the requirements of this chapter, it may issue a temporary permit to the person applying for a license as a registration service.

(b) The temporary permit shall permit the operation by the registration service or registration agent for not more than 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for the license. The department may cancel the temporary permit when it has determined that the application is incorrect or incomplete or that the temporary permit was issued in error.

(c) The temporary permit is invalid when canceled or when the license has been issued or refused.

11405. The department may refuse to issue a license to, or may suspend, revoke, or cancel the license of, a person to act as a registration service for any of the following reasons:

(a) The person has been convicted of a felony or a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity.

(b) The person is, or has been, the holder, or a managerial employee of the holder, of any occupational license issued by the department which has been suspended or revoked.

(c) The person has used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in the application for the license.

(d) The person has knowingly made, or acted with negligence or incompetence, or knowingly or negligently accepted or failed to inquire about any false, erroneous, or incorrect statement or information submitted to the registration service or the department in the course of the licensed activity.

(e) The person has knowingly or negligently permitted fraud, or willfully engaged in fraudulent practices, with reference to clients, vehicle registrants, members of the public, or the department in the course of the licensed activity.

(f) The person has knowingly or negligently committed or was responsible for any violation, cause for license refusal, or cause for discipline under Section 20 or Division 3 (commencing with Section 4000), Division 3.5 (commencing with Section 9840), Division 4 (commencing with Section 10500), or Division 5 (commencing with Section 11100).

(g) The person has failed to keep the business records required by Section 11406.

(h) The person has violated any term or condition of a restricted license to act as a registration service.

(i) The person has committed or was responsible for any other act, occurrence, or event in California or any foreign jurisdiction which would be cause to refuse to issue a license to, or to suspend, revoke,

or cancel the license of, a person to act as a registration service.

11406. (a) Every registration service shall keep business records containing all of the following information:

(1) The name, address, and license number of the registration service and the name and address of every employee who performs registration work.

(2) The name and address of each client for whom registration work was performed.

(3) The identity of every vehicle by year, make, type, license number, and vehicle identification number on which registration work was performed.

(4) The amount of registration fees or payments collected for each vehicle on which registration work was performed, including the method of payment to the registration service.

(5) The amount of registration fees or payments submitted to the department for each vehicle on which registration work was performed, including the date and method of payment to the department.

(6) The amount of any refunds or additional charges on registration fees or payments collected for each vehicle on which registration work was performed, including the date and method of payment of the refund or additional charge by or to the client, the registration service, or the department, as the case may be.

(7) The name, signature, or initials of each employee performing work on each transaction and the date the work was done.

(8) The cost to each client for the registration work performed on each of the client's vehicles.

(b) As an alternative to maintaining the records required by paragraphs (1) to (8), inclusive, of subdivision (a), a registration service doing registration work for a dealer or dismantler may retain a copy of the listing sheet approved by the department for transmitting registration documents if all fees due the department with respect to those registration documents have been paid by the dealer or dismantler by check or money order payable directly to the department.

11407. The business records required by Section 11406 shall be maintained for at least four years and shall be open to inspection by the department during normal business hours.

The department may duplicate or make a record of any information contained in any of those records, which shall be for the official use of the department.

All records shall be returned to the licensee not later than 30 days after receipt of the records by the department.

11408. (a) The director may issue an order to grant an unrestricted or a restricted license to act as a registration service, or an order to deny, suspend, revoke, or cancel a license to act as a registration service.

(b) The order shall become final 30 days from issuance, unless the denied or restricted applicant or licensee files with the department

a request for a hearing. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any registration service may be served with an accusation 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 to the address of the principal place of business on file with the department, whether or not the business has been closed or terminated, unless the registration service has notified the department in writing of another address where service shall be made.

(d) The department may, pending a hearing, temporarily suspend the license issued to a registration service for not more than 30 days if the director finds that action is required in the public interest. In that case, a hearing shall be held and a decision issued within 30 days after notice of the temporary suspension or cancellation.

(e) The director may, following the filing of a statement of issues or an accusation against an applicant or a registration service, with the consent of the applicant or licensee, enter into a compromise settlement agreement with a stipulated restriction or penalty whereby the applicant or licensee accepts the terms and conditions of the agreement without hearing or appeal by any party thereto.

(1) The compromise settlement agreement may provide for a restricted license, special operating terms and conditions, a higher bond, a monetary penalty, or any other term or condition agreeable to the parties.

(2) The compromise settlement agreement shall be signed by the respondent applicant or licensee, the director, and the accuser, or their authorized representatives, and filed with the Office of Administrative Hearings, together with the department's notice of withdrawal of the statement of issues or the accusation upon which the action was initiated.

(3) A failure of the respondent applicant or licensee to carry out a compromise settlement agreement entered into under this section is a separate cause to refuse to issue, or to suspend, revoke, or cancel, any license authorizing the respondent to act as a registration service.

(f) Any person whose license to act as a registration service was suspended for cause and the terms of the suspension are unfulfilled, or whose license was revoked for cause, may reapply for a license to act as a registration service after not less than one year from the effective date of the suspension or revocation action.

(g) The issuance of a new license to that person is within the sole discretion of the department, and a hearing regarding that issuance shall be held only upon the consent of the director.

11409. The fee for a license issued to a registration service is as follows:

(a) For the original license, or an ownership change which

requires a new application, one hundred fifty dollars ($150), which is nonrefundable.

(b) For the annual renewal of a license, fifteen dollars ($15).

(c) For the alteration of an existing license required by a name change, address change, change in corporate officer structure, or the addition of a branch location, seventy dollars ($70).

11410. (a) Every license issued under this chapter is valid for a period of one year from the last day of the month of issuance. Except as provided in subdivison (c), renewal of the license for the ensuing year may be obtained by the person to whom the license was issued upon application to the department and payment of the fee required by Section 11409.

(b) Every application for the renewal of a license shall be made by the licensee not more than 90 days prior to the expiration date and shall be made by presenting the completed application form provided by the department and by payment of the renewal fee.

(c) If the application for renewal of the license is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each license held.

(d) A licensee may not renew the license after the expiration of the 30-day period specified in subdivision (c).

SEC. 4. This act shall become operative on July 1, 1991.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 8690.7 to the Government Code, relating to county disaster relief.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. It is the intent of the Legislature that the disaster relief funds provided to local agencies in Chapter 16 of the Statutes of 1986 be expended for costs incurred by the local entities due to the

floods of 1986 and otherwise not paid for by the Federal Emergency Management Administration.

SEC. 2. Section 8690.7 is added to the Government Code, to read:

8690.7. Any county which distributed funds to other local agencies pursuant to Chapter 16 of the Statutes of 1986 shall not be held financially liable for those funds or responsible for any collection of those funds.

This section shall not preclude the state or any county from collecting funds distributed pursuant to Chapter 16 of the Statutes of 1986 from local agencies.

CHAPTER 1198

An act to amend Section 54954.1 of the Government Code, relating to open meetings.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 54954.1 of the Government Code is amended to read:

54954.1. The legislative body which is subject to the provisions of this chapter shall give mailed notice of every regular meeting, and any special meeting which is called at least one week prior to the date set for the meeting, to any person who has filed a written request for that notice with the legislative body. Any mailed notice required pursuant to this section shall be mailed at least one week prior to the date set for the meeting to which it applies except that the legislative body may give the notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting.

Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within 90 days after January 1 of each year.

The failure of any person to receive the notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions of the legislative body for which the notice was given.

The legislative body may establish a reasonable annual fee for sending the notice based on the estimated cost of providing the service.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 1199

An act to add Section 22850.3 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 22850.3 is added to the Vehicle Code, to read:

22850.3. (a) A vehicle placed in storage pursuant to Section 22850 shall be released to the owner or person in control of the vehicle only if the owner or person furnishes, to the law enforcement agency or employee who placed the vehicle in storage, satisfactory proof of current vehicle registration. In lieu of obtaining proof of current registration, the agency which caused the vehicle to be stored may, in its discretion, issue a notice to appear for the registration violation.

(b) At every storage facility there shall be posted in a conspicuous place a notice to the effect that a vehicle placed in storage pursuant to Section 22850 may be released only on proof of current registration or, in the absence of that proof, upon the issuance of a notice to appear for the registration violation by the local agency which caused the vehicle to be stored, specifying the name and telephone number of that local agency.

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 1200

An act to amend Sections 11470, 11488.1, 11488.2, 11488.4, 11488.5, 11488.6, and 11492 of, and to repeal Section 11488.7 of, the Health and Safety Code, relating to crimes.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 11470 of the Health and Safety Code, as amended by Chapter 1195 of the Statutes of 1989, 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, or a violation of Section 11379.6 or 11383 involving, 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, 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, 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 complaint 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 complaint 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.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 2. Section 11488.1 of the Health and Safety Code is amended to read:

11488.1. Property seized pursuant to Section 11488 may, where appropriate, be held for evidence. The Attorney General or the district attorney for the jurisdiction involved shall institute and maintain the proceedings. In the County of Los Angeles, in cases where the value of the seized property is twenty-five thousand dollars ($25,000) or less, and the Attorney General, or the district attorney, or both, have declined to institute forfeiture proceedings, the city attorney for the jurisdiction involved, with the consent of the Attorney General, or the district attorney, or both, may institute and maintain the proceedings.

SEC. 3. Section 11488.2 of the Health and Safety Code is amended to read:

11488.2. Within 15 days after the seizure, if the peace officer does not hold the property seized pursuant to Section 11488 for evidence or if the law enforcement agency for which the peace officer is employed does not refer the matter in writing for the institution of forfeiture proceedings by the Attorney General or the district attorney pursuant to Section 11488.1, the officer shall comply with any notice to withhold issued with respect to the property by the Franchise Tax Board. If no notice to withhold has been issued with respect to the property by the Franchise Tax Board, the officer shall return the property to the individual designated in the receipt therefor or if the property is a vehicle, boat, or airplane, it shall be returned to the registered owner.

SEC. 4. Section 11488.4 of the Health and Safety Code, as amended by Chapter 1195 of the Statutes of 1989, is amended to read:

11488.4. (a) Except as provided in subdivision (j), if the Attorney General or the district attorney determines that the factual circumstances do warrant that the property seized or subject to forfeiture comes within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of law, the Attorney General or district attorney shall file a complaint for forfeiture with the superior court of the county in which the property subject to forfeiture has been seized or in the county in which the property subject to forfeiture is located. If the complaint 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 complaint for 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 shall not be necessary in order to forfeit property under this chapter. 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 of the complaint and notice of the initiation of forfeiture proceedings 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, stating that any interested party may file a verified claim with the superior court, as directed by the notice, 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 the 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 of the initiation of forfeiture proceedings 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 complaint is filed pursuant to this section, a claimant, who alleges standing based on an interest in the property which arose prior to the seizure or filing of the complaint 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 law. 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 complaint is filed pursuant to this section and there is an

underlying or related criminal action and the defendant has not pled guilty or nolo contendere, a defendant who is a claimant alleging an interest in the property in the related forfeiture proceeding may move, exclusively pursuant to Section 1538.5 of the Penal Code, for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to 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 this section and subdivision (d) of Section 11488.5, the People shall have the burden of proving by a preponderance of the evidence that the property is subject to forfeiture as described in Section 11470.

The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in a proceeding under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to questions related to this chapter.

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 facts giving rise to forfeiture 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 the complaint, (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 complaint for forfeiture pursuant to this section within 30 days of the receipt of the claim. The complaint for 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.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 5. Section 11488.5 of the Health and Safety Code, as amended by Chapter 1195 of the Statutes of 1989, is amended to read:

11488.5. (a) (1) Any person claiming an interest in the property alleged to be subject to forfeiture 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, as directed by the notice, 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) Within 30 days of the service of the complaint for forfeiture, a claimant shall file an answer thereto unless for good cause shown, the court extends the time for the filing of the answer.

(b) The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing.

(c) The claim of the state or a local agency to property 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.

(d) If, at the end of the time set forth in paragraph (1) of 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 People shall be required to establish a prima facie case in support of its complaint for forfeiture.

(e) (1) If a verified claim and answer are timely filed, the forfeiture proceeding shall be set for hearing pursuant to the rules of the court, but the proceeding shall have priority over other civil cases. A claim and answer shall not be admissible in the proceeding regarding the offense.

(2) The hearing shall be by jury, unless waived by the parties.

(f) Forfeiture shall be ordered when, at the hearing, the People have shown that the property is subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(g) The forfeiture hearing shall be continued upon motion of the People 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 property is subject to forfeiture pursuant to Section 11470, the court shall order the property released to the person it determines is entitled thereto.

(h) If the court or jury finds that the property is 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 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 People 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.

(i) All 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 provide for disposition 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.

(j) All 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.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 6. Section 11488.6 of the Health and Safety Code, as amended by Chapter 1492 of the Statutes of 1988, is amended to read:

11488.6. (a) If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to Section 11470, and further finds that the People have not met its burden of proving that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract knew or should have known of facts which would or did make the property subject to forfeiture pursuant to Section 11470 when the interest was acquired, and that person's interest is less than the appraised value of the property, that person may pay to the court the owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the People shall relinquish all claims to the property and the court shall enter judgment pursuant to Section 11488.5 against the owner's equity. If the holder of the interest elects not to make payment, the property shall be adjudged forfeited to the state, and the ownership certificate shall be surrendered. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the interestholder and the People, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of Section 11489.

(b) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 7. Section 11488.7 of the Health and Safety Code is repealed.

SEC. 8. Section 11492 of the Health and Safety Code is amended to read:

11492. (a) Concurrent with, or subsequent to, the filing of the complaint, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo or value of the property alleged in the complaint for forfeiture.

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.

(3) Order an interlocutory sale of the property named in the complaint when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof, and the

proceeds thereof shall be deposited with the court or as directed by the court pending determination of the forfeiture proceeding.

(b) No preliminary injunction may be granted, receiver appointed, or interlocutory sale ordered without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property named in the complaint, pending the outcome of the proceedings, and that there is probable cause to believe that the property is subject to forfeiture under Section 11470. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

CHAPTER 1201

An act to amend Sections 22901 and 23202 of, to add Section 23911.5 to, and to repeal Section 24303 of, the Education Code, relating to the State Teachers' Retirement System, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 22901 of the Education Code is amended to read:

22901. A member who elects to receive additional service credit as provided in this chapter shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit in effect at the time of the election.

If the member is currently employed in a position requiring membership in this system, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

If the member is not currently employed in a position requiring membership in this system, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest. Regular interest shall be charged on all contributions from the end of the school year on which the contributions were based to the date of payment.

The employer may pay the amount required as employer contributions for additional service credited under subdivisions (b), (f), (g), and (h) of Section 22902.

Regular interest shall be charged on the monthly unpaid balance

if the member pays in installments.

SEC. 2. Section 23202 of the Education Code is amended to read:

23202. An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the date of the retirement of the member.

An election to redeposit refunded contributions shall be considered as an election to repay all contributions previously refunded.

If any payment due because of such election is not received at the Sacramento office of the system within 120 days of its due date, the election shall be canceled. Upon such cancellation of election any payments made under the election shall be refunded.

In the event of cancellation of the election the member may at any time prior to the date of the retirement of the member, again elect to redeposit accumulated retirement contributions previously withdrawn or refunded, in accordance with Section 23200 and all the laws, rules and regulations pertaining thereto.

SEC. 3. Section 23911.5 is added to the Education Code, to read:

23911.5. When a member who has been granted a disability allowance after June 30, 1972, returns to employment requiring membership in the system and performs:

(a) Less than three years of credited service after termination of the disability allowance, the member shall receive a retirement allowance which is the greater of the following:

(1) A service retirement allowance, computed on actual credited service for employment as of the effective date of disability, projected final compensation to the termination date of the disability allowance, and the member's age at retirement; or

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, exclusive of increments added for children; and

(3) An allowance calculated on actual service credited after the termination date of the disability allowance, final compensation using either actual or projected salaries, and the member's age at retirement.

(b) Three or more years of credited service after termination of the disability allowance, the member shall receive a retirement allowance which is the greater of the following:

(1) A service retirement allowance, computed on all credited service, actual and projected, final compensation using either actual or projected salaries or both actual and projected salaries, and the member's age at retirement.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, exclusive of increments added for children.

SEC. 4. Section 24303 of the Education Code 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 a more equitable formula may be established for the subsequent retirement for members of the State Teachers' Retirement System who reinstate from disability, without adversely impacting the fiscal integrity of the Teachers' Retirement Fund, it is necessary that this act take effect immediately.

CHAPTER 1202

An act to amend Sections 18362, 22208, 22473, 22474, 22614, 24208, 24473, 24474, 24614, 26208, and 26614 of, to add Sections 14210 and 18349.5 to, and to repeal and add Sections 14209, 18435, 22653, 24653, and 26653 of, the Financial Code, relating to lenders.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 14209 of the Financial Code is repealed.

SEC. 2. Section 14209 is added to the Financial Code, to read:

14209. (a) Whenever it appears to the commissioner that any person has engaged in or is about to engage in any acts or practices constituting a violation of any provision of this division or any rule or order adopted pursuant to this division, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver or conservator, which may include the commissioner, may be appointed for the defendant or the defendant's assets, and any other ancillary relief may be granted as appropriate. A receiver or conservator appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, trustees, or persons who exercise similar powers and perform similar duties, including the powers expressly authorized by subdivision (b) of Section 14300.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a), a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award the additional relief.

SEC. 3. Section 14210 is added to the Financial Code, to read:

14210. (a) Any person who willfully violates any provision of this division or who willfully violates any rule or order adopted pursuant

to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

SEC. 4. Section 18349.5 is added to the Financial Code, to read:

18349.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Account holder" includes, in the case of an investment certificate account, an investment certificate holder; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position which is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Industrial loan company" means any corporation which falls within the definitions of Sections 18003 and 18003.5.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner, but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) "Subject person of an industrial loan company" means any director, officer, or employee of the industrial loan company, or any person who participates in the conduct of the business of the industrial loan company. However, "subject person of an industrial loan company" does not include an individual who is a director, officer, or employee of a controlling person of an industrial loan company unless the individual is a director, officer, or employee of the industrial loan company or participates in the conduct of the industrial loan company.

(5) "Controlling person" means a person who, directly or indirectly, controls an industrial loan company.

(6) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participation in, counseling, aiding or abetting a violation.

(b) If, after notice and opportunity for hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with

the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the industrial loan company; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the industrial loan company; or

(C) That the subject person has committed or engaged in any act which constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the industrial loan company has suffered or will probably suffer substantial financial loss or other damage by reason of that violation, act, or breach of fiduciary duty; or

(B) That the interests of the industrial loan company's account holders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of that violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the industrial loan company.

(c) If, after notice and opportunity for hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another industrial loan company or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other industrial loan company or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the industrial loan company.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the industrial loan company or the interests of the industrial loan company's account holders that the commissioner issue the order immediately, and

(2) (A) That any of the factors set forth in paragraphs (1) and (2) of subdivision (b) and any of the factors set forth in paragraph (3) of subdivision (c) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraphs (1), (2), and (3) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner.

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the industrial loan company may pose a material threat to the interest of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company. In case the criminal proceedings are terminated other than by a judgment of conviction the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company or a former subject of an industrial loan company, from his or her office, if any, with the industrial loan company and prohibiting the person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the industrial loan company:

(A) That the person has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the industrial loan company may pose a material threat to the interests of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company.

(3) The fact that any subject person of an industrial loan company charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner

from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file an application for a hearing pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of an industrial loan company, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(h) A hearing held pursuant to this section shall be private unless the administrative law judge, in his or her discretion, after fully considering the views of the parties, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of an industrial loan company or former subject person of an industrial loan company to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any industrial loan company.

(B) To vote any shares or other securities of an industrial loan company having voting rights, for the election of any person as a director of an industrial loan company.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any industrial loan company having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any industrial loan company.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both such fine and imprisonment.

(3) If the commissioner believes that any person has violated paragraph (1), the commissioner may bring an action in a court of competent jurisdiction petitioning the court to assess that person a civil penalty in an amount as the commissioner may specify; provided, however, that the amount of the civil penalty shall not exceed two thousand five hundred dollars ($2,500) for each violation or, in the case of a continuing violation, two thousand five hundred dollars ($2,500) for each day for which the violation continues.

In determining the amount of a civil penalty to be assessed under this paragraph, the court shall consider the financial resources and

good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the court may be relevant.

SEC. 5. Section 18362 of the Financial Code is amended to read:

18362. (a) If the commissioner believes that an industrial loan company or its directors, officers, agents, or employees have violated or are about to violate any of the provisions of this division, or any provision of an order, license, permit, decision, demand, or requirement of the commissioner, the commissioner may bring an action against such persons to enjoin those persons from continuing the violation or the attempt to violate this division, or doing any act in furtherance thereof. The commissioner shall bring such action in the name of the people in the superior court, and the court may enter an order or judgment awarding a preliminary or final injunction as is proper.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award the additional relief.

(c) Any person who violates any provision of this division, or who violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to civil and criminal penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

SEC. 6. Section 18435 of the Financial Code is repealed.

SEC. 7. Section 18435 is added to the Financial Code, to read:

18435. Except as otherwise provided in this division, any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 18349.5.

SEC. 8. Section 22208 of the Financial Code is amended to read:

22208. (a) Each licensee shall pay to the commissioner its pro

rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which such assessment is made. The pro rata share shall be the proportion which a licensee's gross income bears to the aggregate gross income of all licensees as shown by the annual financial reports to the commissioner.

(b) On or before the 30th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall neither be assessed for or be permitted to pay less than one hundred fifty dollars ($150) per year.

(d) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

SEC. 9. Section 22473 of the Financial Code is amended to read:

22473. *Each licensed personal property broker shall:*

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the personal property broker and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the personal property broker shall obtain a full statement of all sums paid or payable to the broker or other person. The personal property broker shall keep these statements for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has

been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received, and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, cancel or plainly mark "paid" and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, except such as are a part of the court record in any action, or such as have been delivered to a third person for the purpose of carrying out their terms, or a security agreement which secures any other indebtedness of a borrower to the licensee. When a trust deed on real property has been taken, as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Section 9404 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9401 of the Commercial Code.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the personal property broker and the broker, if any.

SEC. 9.5. Section 22474 of the Financial Code is amended to read:

22474. Each licensed broker shall:

(a) Deliver to the borrower, or any one thereof, at the time the final negotiation or arrangement is made, a statement showing in clear and distinct terms the name, address, and license number of the broker and the personal property broker. The statement shall show the date, amount, and terms of the agreement with the broker, and all amounts paid or to be paid to the broker and to any person other than the personal property broker.

(b) Deliver to the personal property broker making the loan a copy of the statement referred to and described in subdivision (a).

(c) Deliver to the person making any payment to the broker to be retained by the broker, a plain and complete receipt for each payment made, at the time it is made, showing the total amount received, and identifying the brokerage agreement and the loan

contract upon which the payment is applied. If the payment is made by a person other than the personal property broker, a copy of the receipt shall be delivered to the personal property broker.

(d) When the borrower pays the loan in full, see that the personal property broker fully complies with subdivision (e) of Section 22473.

(e) Deliver to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the broker and personal property broker.

SEC. 10. Section 22614 of the Financial Code is amended to read:

22614. (a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate any provision of this division, or any provision of any order, license, decision, demand, requirement, or any rule adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action, or the commissioner may request the Attorney General to bring an action in the name of the people, against that person to enjoin that person from continuing that violation or engaging therein or doing any act in furtherance thereof. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

SEC. 11. Section 22653 of the Financial Code is repealed.

SEC. 12. Section 22653 is added to the Financial Code, to read:

22653. Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had

knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 22614.

SEC. 13. Section 24208 of the Financial Code is amended to read:

24208. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner for the ensuing year, and any deficit actually incurred or anticipated in the administration of the program in the year in which such assessment is made. The pro rata share shall be the proportion which a licensee's gross income bears to the aggregate gross income of all licensees as shown by the annual financial reports to the commissioner.

(b) On or before the 30th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall neither be assessed for or be permitted to pay less than one hundred fifty dollars ($150) per year.

(d) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

SEC. 14. Section 24473 of the Financial Code is amended to read:

24473. Each licensed consumer finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the consumer finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate or rates of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other

person has participated, then the consumer finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The consumer finance lender shall keep these statements for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received, and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, cancel or plainly mark "paid" and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, except such as are a part of the court record in any action, or such as have been delivered to a third person for the purpose of carrying out their terms, or a security agreement which secures any other indebtedness of a borrower to the licensee. When a trust deed on real property has been taken, as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Section 9404 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9401 of the Commercial Code.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the consumer finance lender and the broker, if any.

SEC. 14.5. Section 24474 of the Financial Code is amended to read:

24474. Each licensed broker shall:

(a) Deliver to the borrower, or any one thereof, at the time the final negotiation or arrangement is made, a statement showing in clear and distinct terms the name, address, and license number of the broker and the consumer finance lender. The statement shall show the date, amount, and terms of the agreement with the broker, and all amounts paid or to be paid to the broker and to any person other than the consumer finance lender.

(b) Deliver to the consumer finance lender making the loan a copy of the statement referred to and described in subdivision (a).

(c) Deliver to the person making any payment to the broker to be retained by the broker, a plain and complete receipt for each payment made, at the time it is made, showing the total amount received, and identifying the brokerage agreement and the loan contract upon which the payment is applied. If the payment is made by a person other than the consumer finance lender, a copy of the receipt shall be delivered to the consumer finance lender.

(d) When the borrower pays the loan in full, see that the consumer finance lender fully complies with subdivision (e) of Section 24473.

(e) Deliver to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the broker and consumer finance lender.

SEC. 15. Section 24614 of the Financial Code is amended to read:

24614. (a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate any provision of this division, or any provision of any order, license, decision, demand, requirement, or any rule adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action, or the commissioner may request the Attorney General to bring an action in the name of the people, against that person to enjoin that person from continuing that violation or engaging therein or doing any act in furtherance thereof. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

SEC. 16. Section 24653 of the Financial Code is repealed.

SEC. 17. Section 24653 is added to the Financial Code, to read:

24653. Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 24614.

SEC. 18. Section 26208 of the Financial Code is amended to read:

26208. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which such assessment is made. The pro rata share shall be the proportion which a licensee's gross income bears to the aggregate gross income of all licensees as shown by the annual financial reports to the commissioner.

(b) On or before the 30th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in additon to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall not be assessed for or be permitted to pay less than one hundred fifty dollars ($150) per year.

(d) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. If, after such an order is made, a request for hearing is filed in writing within 30 days and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its license is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

SEC. 19. Section 26614 of the Financial Code is amended to read:

26614. (a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate any provision of this division, or any provision of any order, license, decision, demand, requirement, or any rule adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action, or the commissioner may

request the Attorney General to bring an action in the name of the people, against that person to enjoin that person from continuing that violation or engaging therein or doing any act in furtherance thereof. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

SEC. 20. Section 26653 of the Financial Code is repealed.

SEC. 21. Section 26653 is added to the Financial Code, to read:

26653. Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 26614.

SEC. 22. 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 1203

An act relating to special education, and making an appropriation therefor.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

I am deleting the $145,000 appropriation contained in Section 3 of Assembly Bill No. 3072.

This bill would require the Legislative Analyst to conduct a study or contract for a study to be conducted, in the delivery of occupational and physical therapy to individuals with exceptional needs that have been assessed as requiring those services in order to benefit from special education. This bill would appropriate $145,000 from the General Fund to the Legislative Analyst to conduct the study.

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 1990, more than $54 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 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 3072

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. (a) The Legislature recognizes all of the following:

(1) Federal law requires that individuals with exceptional needs be provided with a free, appropriate public education, which is defined to include special education and related services in conformity with a pupil's individualized education program.

(2) The statutory responsibility for providing the related services of occupational and physical therapy is shared by the local educational agencies, which are required to provide occupational and physical therapy if a pupil's individual education plan deems the therapy necessary, and the State Department of Health Services or its designated local agency administering the California Children's Services, if the occupational and physical therapy is deemed medically necessary by reason of a medical diagnosis and is contained in the pupil's individual education plan.

(3) Because of the shared responsibility for providing occupational and physical therapy for pupils with exceptional needs, pupils whose individual education plans indicate the need for occupational and physical therapy often are not receiving those services because in many cases there is uncertainty as to which agency has ultimate responsibility for providing the services, there is a lack of funding to provide the services, and there is a lack of staff to perform the services.

(4) Due to the increase in children who are born with birth defects caused by fetal alcohol syndrome and prenatal drug exposure

the need for special education and related services, including occupational and physical therapy, is expected to increase as these children are assessed as being in need of special education.

(5) It is estimated that 375,000 drug-exposed children are born every year in the United States. Reports from the San Francisco area indicate that 10 percent of all babies born in that area were exposed to crack cocaine. Recent research concludes that crack cocaine-exposed babies suffer permanent brain damage.

(b) It is the intent of the Legislature to comply with the federal mandate that individuals with exceptional needs be provided a free, appropriate public education and, based on that intent, to study the delivery of occupational and physical therapy to individuals with exceptional needs who have been assessed as requiring those services in order to benefit from special education. It is also the intent of the Legislature that all state agencies cooperate to ensure that individuals with exceptional needs receive the special education and related services necessary to obtain the free, appropriate public education required by law.

SEC. 2. (a) The Legislative Analyst shall conduct a study, or contract for a study to be conducted, and shall submit the results of that study to the Legislature no later than December 1, 1991. The study shall be conducted with advice from the State Department of Education and the State Department of Health Services and shall address the following:

(1) Whether the need of pupils with exceptional needs for occupational and physical therapy, as determined by the individualized education program team, is being met as required by law.

(2) Which state and local agencies are most appropriate to provide occupational and physical therapy for pupils with exceptional needs.

(3) The cost of providing occupational and physical therapy services, the expertise needed to provide those services, the various sources of funding available to provide the services, the extent to which various state and local agencies are cooperating in providing the services and the existence of any constraints on that cooperation, and the number of individuals currently receiving the services as well as estimates of current and future unmet needs.

(b) The study described in subdivision (a) shall be accompanied by the Legislative Analyst's recommendations as to how the occupational and physical therapy needs for individuals with exceptional needs could be better met, including a methodology for obtaining parental input, and a description of any statutory changes necessary to effectuate those recommendations.

SEC. 3. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the General Fund to the Legislative Analyst for the 1990–1991 fiscal year for the purpose of conducting the study described in Section 2 of this act. In the event that the Legislative Analyst contracts for that study to be conducted,

up to five thousand dollars ($5,000) of that amount may be expended for administrative expenses incurred by the Legislative Analyst with regard to that study.

CHAPTER 1204

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

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

I am reducing the appropriation contained in Section 4 of Assembly Bill No 3234 from $149,000 to $74,500

This bill would appropriate funds to reimburse the Santa Barbara County District Attorney's Office for costs involved in prosecuting a double homicide committed in Santa Barbara County being tried in Israel

I commend the County of Santa Barbara for pursuing prosecution of this murder case The demands placed on budget resources, however, require all of us to set priorities Therefore, I am approving half of this appropriation so that the state and the county will share in the costs of this prosecution

With this reduction, I approve Assembly Bill No 3234.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The State of California has a public safety interest in protecting its citizens from violent crime and murder. While the financing of criminal investigations and prosecutions is generally a county responsibility, the state recognizes that there may be unusual cases where the interests of the state may warrant financial assistance to a county in financing this type of criminal investigation and prosecution.

Factors warranting state assistance in these investigations and prosecutions include all of the following:

(1) When the violent crime or murder is committed within California, and the suspects are apprehended in a foreign country whose laws prohibit extradition to California, but where it is possible for the suspects to be tried for the violent crime or murder in the foreign country.

(2) When a foreign country files charges for a violent crime or murder against a person suspected of committing that crime against a California resident within California, and there are unusual and extraordinary expenses associated with the transportation of a large number of witnesses to the foreign country.

(3) When the California county which would otherwise have jurisdiction has already expended significant manpower and monetary resources investigating the case, and has already incurred substantial expenses related to the investigation in that foreign country.

SEC. 2. The County of Santa Barbara is presently involved in the prosecution of two Israeli nationals in Israel, for two murders

committed in Santa Barbara County. The Legislature hereby finds and declares that the prosecution of two Israelis in Israel for the murders of Carmen and Jack Hively of Montecito, California on October 5, 1987, is an unusual case meeting the criteria set out in Section 1, warranting state assistance in the financing of this case.

SEC. 3. It is the Legislature's intent in enacting this measure to address unique circumstances in one particular murder case. As a result, the Legislature hereby declares that this legislation shall not serve as a precedent warranting state assistance in the financing of any future criminal cases.

SEC. 4. The sum of one hundred forty-nine thousand dollars ($149,000) is hereby appropriated from the General Fund to the Controller for allocation and disbursement to reimburse the Santa Barbara County District Attorney's Office for costs involved in investigating and prosecuting in the State of Israel the murder of Carmen and Jack Hively in Montecito, California on October 5, 1987. Reimbursement is limited to those reasonable and necessary costs associated with the investigation and prosecution of the Santa Barbara case in Israel. Reimbursable costs shall include, but not be limited to, Santa Barbara County's prosecution and investigation costs associated with the Israeli investigation and prosecution, all witness fees or witness transportation or per diem expenses they would otherwise be entitled to under California law, costs of translating or preparing documents or reports needed for the Israeli investigation and trial, duplication or conversion of documentary, photographic, or other evidence, and any other expenses reasonably related to the investigation, preparation, and trial of the case in Israel. However, reimbursable costs shall not include Israeli judicial or prosecutorial personnel or administrative costs.

CHAPTER 1205

An act to amend and supplement the Budget Act of 1990 by adding Item 3760-002-565 to Section 2.00 thereof, relating to parks and recreation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

I am deleting the $50,000 appropriation contained in Section 1 and the $40,000 appropriation contained in Section 2 of Senate Bill No 2621

This bill would amend the Budget Act of 1990 by adding Item 3760-002-565, and appropriating $50,000 to the State Coastal Conservancy (SCC) for administrative costs associated with its efforts to facilitate the acquisition of Gray Whale Ranch in Santa Cruz County for park purposes. In addition, this bill would redirect $40,000 to the Department of Parks and Recreation for a grant to the Midpeninsula Regional Open Space District.

The appropriation to the SCC to defray administrative costs associated with the Gray Whale Ranch is unnecessary because the SCC's budget already contains funding for projects of this type Furthermore, the grant to the Midpeninsula Regional Open

Space District for the Skyline Ridge Open Space Preserve Interpretive Center should be subject to the normal budget process so that it could be prioritized against other competing projects on a statewide basis.

With these deletions, I approve Senate Bill No. 2621.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Item 3760-002-565 is added to Section 2.00 of the Budget Act of 1990, to read:

3760-002-565—For capital outlay, State Coastal Conservancy, for administrative costs incurred in acquiring the Gray Whale Ranch in Santa Cruz County, payable from the State Coastal Conservancy Fund of 1976 50,000

SEC. 2. Of the balance of the appropriation made by subparagraph (D) of paragraph (3) of subdivision (c) of Section 4 of Chapter 1241 of the Statutes of 1989, forty thousand dollars ($40,000) is hereby appropriated to the Department of Parks and Recreation for a grant to the Midpeninsula Regional Open Space District for the Skyline Ridge Open Space Preserve Interpretive Center.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the acquisition of the Gray Whale Ranch and to avoid losing matching funds available for the Skyline Ridge Open Space Preserve Interpretive Center, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1206

An act to amend Section 88079 of, to add Section 84708 to, to repeal Sections 78600 and 78600.5 of, and to repeal and add Section 84850 of, the Education Code, to amend Section 12419.7 of the Government Code, and to amend Section 23.50 of Chapter 313 of the Statutes of 1988, relating to community colleges.

[Approved by Governor September 21, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 78600 of the Education Code is repealed.

SEC. 2. Section 78600.5 of the Education Code is repealed.

SEC. 3. Section 84708 is added to the Education Code, to read:

84708. For the 1991–92 fiscal year and each fiscal year thereafter,

the base revenues for each community college district shall be computed in accordance with the procedures defined in Section 84700, including all average daily attendance computed pursuant to Section 84500 as adjusted by Section 84895, if applicable, that would have otherwise been funded in the previous fiscal year if one-time supplemental funding of instructional hours through the Budget Act were not available.

It is the intent of the Legislature that districts' additional average daily attendance funded through the general apportionment process as a result of other districts' average daily attendance or attendance hours being funded through supplemental funds shall be understood to be one-time and shall not become part of the base revenue for subsequent years.

SEC. 4. Section 84850 of the Education Code is repealed.

SEC. 5. Section 84850 is added to the Education Code, to read:

84850. (a) The Board of Governors of the California Community Colleges shall adopt rules and regulations for the administration and funding of educational programs and support services to be provided to disabled students by community college districts pursuant to Chapter 14.2 (commencing with Section 67310) of Part 40.

(b) As used in this section, "disabled students" are persons with exceptional needs enrolled at a community college who, because of a verified disability, cannot fully benefit from classes, activities, and services regularly provided by the college without specific additional specialized services or educational programs.

(c) The regulations adopted by the board of governors shall provide for the apportionment of funds to each community college district to offset the direct excess cost of providing specialized support services or instruction, or both, to disabled students enrolled in state-supported educational programs or courses. Direct excess costs are those actual fixed, variable, and one-time costs, as defined in Section 67312, which exceed the combined total of the following:

(1) The average cost to the district of providing services to nondisabled students times the number of students served by disabled student programs and services.

(2) The indirect cost to the district of providing facilities and support for the administration of disabled student programs and services.

(3) The revenue derived from average daily attendance in special classes.

(4) Any other funds for serving disabled students which the district receives from federal, state, or local sources.

(d) As a condition of receiving funds pursuant to this section, each community college district shall certify that reasonable efforts have been made to utilize all funds from federal, state, or local sources which are available for serving disabled students. Districts shall also provide the programmatic and fiscal information concerning programs and services for disabled students that the regulations of the board of governors require.

(e) The board of governors may authorize the chancellor, consistent with the requirements the board may impose, to designate up to 3 percent of the funds allocated pursuant to this section for program development and program accountability.

SEC. 6. Section 88079 of the Education Code is amended to read:

88079. If the governing board of any community college district establishes positions and restricts initial appointment of new employees to mentally, physically, or developmentally disabled persons, then such positions shall, in addition to the regular class title, be classified as "restricted." The positions shall be part of the classified service and persons so employed shall be classified employees for all purposes except that they shall not be subject to the provisions of Section 88091 or 88092, and that they shall not acquire permanent status or seniority credit and shall not be eligible for promotion into the regular classified service until they have complied with the provisions of subdivision (c) of Section 88005.

SEC. 7. Section 12419.7 of the Government Code is amended to read:

12419.7. For the purposes of Section 12419.5, an amount due a state agency from a person or entity shall include any amount due a community college district from a person for repayment of student financial assistance or any other proper financial obligation due to the district or a college.

If the Controller, in his or her discretion, offsets an amount due a community college district from a person pursuant to Section 12419.5, the Controller shall remit the amount offset to the district.

SEC. 8. Section 23.50 of Chapter 313 of the Statutes of 1988 is amended to read:

SEC. 23.50. (a) (1) The sum of two hundred ninety-two million six hundred sixty-seven thousand dollars ($292,667,000) is hereby appropriated upon receipt from California's allocation of Federal State Legalization Impact Assistance Grant (SLIAG) funds which were appropriated by Congress in Section 204 of the Federal Immigration Reform and Control Act (IRCA) of 1986. These funds shall be transferred by the Controller, upon order of the Director of Finance, to the appropriate administering department.

(2) The amount appropriated by this section shall be allocated in accordance with the following schedule:

(A) Public Health, $23,300,000:

(1) TB/Leprosy Control	$8,100,000
(2) Sexually Transmitted Disease	1,700,000
(3) Laboratory Support	300,000
(4) California Children's Services	1,700,000
(5) Immunizations	500,000
(6) Perinatal Services	2,800,000
(7) Family Planning	3,200,000
(8) Child Health and Disability Prevention	———
(9) Adolescent Family Life Program	500,000

(10) IRCA Subvention		3,500,000
(11) IRCA Central Administrative Unit		300,000
(12) IRCA Administrative Distributed to Programs		(1,700,000)
(13) Public Health Administration Overhead		700,000
(B) Medical and Human Services, $185,267,000:		
(1) General Assistance		$41,400,000
(1.5) Foster Care		2,500,000
(2) AFDC-U		7,400,000
(3) SSI/SSP		12,900,000
(4) Food Stamps (SAWS)		300,000
(5) Housing		2,500,000
(6) In-Home Supportive Services		200,000
(7) Housing and Community Development Administration		314,000
(8) Department of Social Services Administration		886,000
(9) Medi-Cal		26,900,000
(10) Medically Indigent Services Program		67,600,000
(11) County Medical Services Program		4,900,000
(12) Primary Care Clinics		11,600,000
(13) Mental Health		3,000,000
(14) Department of Mental Health Administration		314,000
(15) Department of Health Services Administration		1,272,000
(16) Health and Welfare Agency Administration		1,281,000
(D) Education, $84,100,000:		
(1) Adult Education (English as a Second Language and Civics)		$80,000,000
(i) Adult Programs in K-12 Districts	41,400,000	
(ii) Community College Programs	23,600,000	
(iii) Community Based Organizations	15,000,000	
(2) K-12 Supplemental		2,800,000
(3) State Department of Education and California Community College Chancellor's Office Administration		1,300,000

(b) Notwithstanding Sections 6.50, 8.50, and 28.00 of this act, the following provisions shall govern the augmentation and reduction of the amounts available for expenditure for any category or program in the schedule set forth in this item, and the transfers of funds among categories in the schedule set forth in this item.

(1) The Director of Finance may not authorize the augmentation of the total amount available for expenditure in the

schedule set forth for appropriation in this item to reflect any available SLIAG funds which he or she determines have not been taken into consideration in the schedule or are in excess of the amount so taken into consideration, except as follows:

(A) The Director of Finance may allocate the balance of any remaining funds authorized for expenditure by Section 14.00 of the Budget Act of 1987 for any other category or program in the schedule set forth for appropriation in this item.

(B) The Director of Finance may authorize the expenditure of any availabe SLIAG funds which he or she determines have not been taken into consideration in the schedule or are in excess of the amount so taken into consideration, if the Director determines that the state's total five-year allocation exceeds $1,700,000,000 and that the additional expenditures can be sustained over the duration of the five-year expenditure plan within the revised estimate of SLIAG allocations. These additional expenditures may be authorized not sooner than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the committees in each house which consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine.

(2) The Director of Finance may authorize the further augmentation of the amount available for expenditure for any category or program in the schedule set forth for appropriation in this item for increases in the level of service due to increased caseload, utilization, or cost per unit of service. These augmentations may be authorized pursuant to the provisions of paragraph (4). The Director of Finance may not authorize the augmentation of the amount available for expenditure from SLIAG funds for new program activities not identified in the schedule set forth in this item.

(3) The Director of Finance may also reduce the amount available for expenditure for any category or program in the schedule set forth for appropriation in this item for reductions in the level of service due to decreased caseload, utilization, or cost per unit of service. These reductions may be authorized pursuant to the provisions of paragraph (4). The Director of Finance may not authorize the elimination of the expenditure from SLIAG funds for program activities identified in the schedule set forth in this item.

(4) The Director in the Finance may authorize the augmentation or reduction of the amount available for expenditure

for a category or program designated in the schedule set forth for such appropriation in this item by transfer from or transfer to any of the other designated categories within this item for the purposes stated in paragraphs (2) and (3). This authorization is limited to transfers of funds within the same major grouping of categories (i.e., within public health, within medical and human services, or within education). These transfers may be authorized not sooner than 10 days after notification in writing of the necessity therefor is provided to the chairperson of the committees in each house which consider appropriations and the Chairpersons of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine. Transfers of SLIAG funds between categories located in different major groupings may be authorized not sooner than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the committees in each house which consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine. Transfers from public health or medical and human services categories to education categories may not exceed $4,205,000 over the course of the fiscal year.

(d) To the maximum extent possible, public assistance and public health programs shall use existing delivery mechanisms, funding mechanisms and service providers to deliver services or benefits to eligible legalized aliens.

(e) Those funding mechanisms which currently allocate resources on the basis of the general population of the respective counties shall be interpreted to refer to the number of eligible legalized aliens in each county insofar as allocation of the IRCA apportionment is concerned. Other funding mechanisms which may use variables different than population shall similarly be interpreted to utilize such variables only as they apply to eligible legalized aliens.

(fx) It is the intent of the Legislature that all SLIAG reimbursable costs shall be identified to ensure that California's allotment of federal SLIAG funds is maximized. Departments shall authorize service providers to claim SLIAG funds using a method of cost calculation allowable under federal SLIAG funds using a method of cost calculation allowable under federal SLIAG regulations which minimizes the under identification of all SLIAG reimbursable costs. The method of cost calculation which can be used may include, but shall not be limited to, the use of a statistically valid sample of a provider's caseload, or, for public health programs, the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

(g) The Health and Welfare Agency and administering depart-

ments, including the Department of Education, shall take the steps necessary to subrogate to the providers of service, the financial liability for inappropriate expenditure or nonuse of federal funds. Whenever current program requirements do not specify such responsibility, the appropriate state agency shall enter into agreements with providers calling for their acceptance of financial responsibility in return for allocation of funds by the state. Funds shall not be allocated to any provider by administering departments absent acceptance of financial responsibility for audit exceptions by the provider.

(h) The general assistance program will remain the responsibility of the counties in which the newly legalized aliens reside. The State Department of Social Services shall provide necessary oversight and shall allocate funds for eligible legalized aliens through application to the IRCA population of the system which allows counties to claim general assistance funds for refugees. All allocations shall be adjusted on the basis of actual caseload experience to the extent funds are available.

(j) Records of services provided to eligible legalized aliens will be kept at the local level except for those programs that use central fiscal intermediary functions to process claims. Individual programs will require periodic reports from providers and will provide their managing state departments with summary data at quarterly intervals. The managing departments and the Health and Welfare Agency will track the provision and cost of services to eligible legalized aliens.

(k) K-12 supplemental education services shall be limited to those eligible legalized aliens who meet the requirement of the Federal Emergency Immigration Act of having had less than three years of education in the United States. The Superintendent of Public Instruction shall allocate such funds, upon application by local school districts, to those districts that are highly impacted by the number of eligible legalized alien children.

(*l*) The Department of Education shall distribute adult education SLIAG funds to community colleges, local school districts, and community-based organizations—including qualified designated entities authorized to provide educational services by the Immigration and Naturalization Service regulations—in accordance with an IRCA Adult Education Services Delivery Plan (A-ESDP). This plan shall be developed by the Department of Education in consultation with representatives of the different service provider groups. Prior to allocation of any SLIAG funds to the Department of Education, the AESDP shall be approved by the Director of Finance. The State Department of Education shall reimburse community colleges for reimbursement claims showing actual costs higher than those reimbursable under the state's existing funding formula, provided that all of the following conditions are met:

(1) Only actual costs are reported.

(2) The total amount reimbursed to any college does not exceed its state ADA apportionment rate and the ancillary costs allowable under the existing SLIAG rules.

(3) That fiscal year 1988-89 funds are available.

(m) The Adult Education Services Delivery Plan shall specify:

1. The process for tracking SLIAG funds to eligible legalized aliens;
2. That the maximum average reimbursement per eligible legalized alien participating in educational services, other than preliminary diagnostic screening or evaluation of proficiency levels, shall be the lesser of (1) the service hours provided multiplied by the statewide average revenue limit for K-12 adult education programs computed on an hourly basis or (2) $500 per eligible legalized alien per year. However, private providers of educational services shall not be reimbursed for amounts that exceed their actual costs of providing services;
3. An apportionment process which includes guarantees or safeguards that the $500 dollar limit shall not be exceeded;
4. The steps which shall be taken to secure specific course approval by the United States Attorney General such that the Immigration and Naturalization Service may accept satisfactory progress in California's courses of instruction as counting toward the language and civics standards which are applied at the time of the interview for permanent residency;
5. How community-based organizations and qualified designated entities may receive SLIAG educational funds in an expeditious and timely manner, while guaranteeing that appropriate standards of educational quality are maintained;
6. The appropriate division of responsibility between local school districts and the community colleges;
7. The appropriate division of scheduled administrative support between the Department of Education and the chancellor's office of the community colleges;
8. Methods for encouraging the development of courses which are specifically designed to meet the language and civics proficiencies which will be required of eligible legalized aliens by the Immigration and Naturalization Service at the time of the conversion from temporary to permanent residency;
9. That a score of 215 on the Comprehensive Adult Student Assessment System (CASAS) test equates to an eligible legalized alien being able to demonstrate proficiency in English for the purposes of converting from temporary to permanent residency status. Educational services also may be provided to eligible legalized aliens scoring at or above the CASAS 215 level prior to their conversion to permanent

residency. However, providers of educational services must target services first to those individuals scoring below the CASAS 215 level and then secondly to those inviduals scoring at or above this level; and

10. K-12 school districts and community colleges shall not receive General Fund apportionments for services provided to eligible legalized aliens where reimbursement for such services has been provided from SLIAG funds.

(ma) Funds totaling $2,500,000 shall be allocated to the Department of Housing and Community Development for eligible housing programs, with priority given to the following: the Office of Migrant Services, the Farmworker Housing Grant Program, the Farm Labor Rehabilitation Loan Program, and the Emergency Shelter Program.

(me) The Health and Welfare Agency shall include foster care as a SLIAG allowable service in the federal fiscal year 1989 application for SLIAG funds.

(n) The Health and Welfare Agency shall oversee outreach services provided to eligible legalized aliens (ELA's) by appropriate departments through ongoing programs. The outreach efforts of the departments shall cover, to the extent SLIAG reimbursement is allowed:

(1) Information and referral services about the program services available, how to access providers of these services, how to utilize these services, and the potential consequences of using services on the ELA's conversion to permanent residency.

(2) The identification of deterrent factors and program areas in which basic needs of ELA's are not being met.

(3) Information on the requirements for change in status from temporary legal resident to permanent legal resident. The State Department of Education shall also provide information on the specific requirements and guidelines for courses of study for English language and civics instruction as established by the Immigration and Naturalization Service (INS).

In addition to funding for outreach activities conducted under the individual program allocations in the schedule contained in subdivision (a), the Health and Welfare Agency shall have the discretion to utilize up to $900,000 in funds for outreach activities, and to distribute these funds to participating state departments based on what it determines is necessary to accomplish the objectives of the outreach program. The agency shall give priority to educational programs provided by K-12 school districts, community college districts, and community-based organizations.

(o) Each state department which receives or administers SLIAG funds shall make available, where necessary, through existing

programs, technical assistance and training to service providers. Technical assistance may include information and training in proposal preparation, cost tracking and identification systems, federal rules and regulations governing accounting procedures and program accountability, and identification procedures for ELA's. These departments may implement this technical assistance through any of the following:

(1) Local or regional workshops.
(2) Identification of model programs.
(3) Onsite consultation.
(4) Statewide training/Association activities.

The departments may provide this technical assistance directly through existing programs or through contracts with individuals or organizations having expertise in program areas and the provisions of the State Legalization Impact Assistance Grant (SLIAG) program.

(p) Primary care clinics may use funds allocated in the Primary Care Clinic line item in the schedule contained in subdivision (a) for public health costs incurred for providing services to ELA's. These public health services shall include treatment for communicable diseases and provision of services to special populations. In addition to using primary care clinic funds for public health services, primary care clinics may participate in established public health program contracting processes in order to be reimbursed from other funding sources. The State Department of Health Services shall coordinate its various public health contracting programs to allow eligible primary care clinics to apply for provider status in public health programs as appropriate.

(q) The State Department of Education, in providing administrative oversight of SLIAG programs, shall provide contact names and telephone numbers to community-based organizations to assist them in establishing educational programs for eligible legalized aliens. One person in the IRCA unit shall be designated responsible for coordinating the provision of technical support to community-based organizations, including outreach to these community-based organizations and assisting them in locating credentialed instructors and in obtaining in-service training.

(r) (1) All entities providing English as a Second Language (ESL) classes to eligible legalized aliens (ELA's) shall employ at least one teacher/coordinator who holds a certificate or credential recognized by the appropriate credentialing agency as an indicator of the teacher's ability to teach in a language development program. All other individuals who teach ESL classes shall:

(A) Hold a bilingual education or language development specialist certificate issued by the appropriate credentialing agency; or

(B) Be credentialed and have successfully completed col-

lege coursework or training in ESL.

(2) When no teacher meeting the above criteria is available for placement, individuals who meet any of the following criteria and agree to participate in mandatory, concurrent training in ESL of at least 2 units per semester or the equivalent, may be hired. Eligible candidates include individuals who:

(A) Are not credentialed, but have ESL college coursework or training; or

(B) Have established proven experience in ESL of not less than 6 months of successful direct ESL instruction with any age group. Individuals who do not meet any of the above requirements shall not be hired to teach ESL classes funded by SLIAG funds.

(3) In-service training provided to ESL instructors as specified above will include: how adults learn ESL, how to structure classroom and individual learning programs, and how to select appropriate class instructional materials/texts which also are applicable to the clients' role as citizens and potential employees. The costs of staff training in ESL may be reimbursed by SLIAG grants as long as these costs are within the total of five hundred dollars ($500) limit per participant.

(s) Of the adult education funds provided in the SLIAG plan for the 1987–88 and 1988–89 fiscal years, up to $2,000,000 may be expended to provide in-service training for teachers assigned to English as a Second Language and history and government courses for individuals granted amnesty under PL 99-603. In addition, staff development shall include the training of teachers on the overall process to become permanent legal residents and eventually naturalized citizens. These funds shall be distributed to school districts, community college districts, and public and private nonprofit organizations certified to offer SLIAG educational courses, and the funding shall be made available within the constraints of the $500 per person cap. Programs may be offered by the University of California, California State University, local school districts, community colleges, or other agencies. It is the intent of the Legislature that these programs shall be established as soon as possible in order to maximize the impact of the funds in providing thoroughly trained teachers for classes for eligible legalized aliens to obtain permanent status.

(t) All contracts and agreements involving the State Legalization Impact Assistance Grant (SLIAG) Fund shall require both contracting parties to maintain the confidentiality of all beneficiary information relating to immigration status. The contracts shall specify that such information shall not be released to the United States Immigration and Naturalization Service or any other agency without the beneficiary's consent, unless such release is required by state or federal law.

(u) The State Department of Health Services shall, in consultation

with county health departments, prepare appropriate reporting form(s) to be used by counties for claiming their SLIAG-reimburseable expenditures for public health services consistent for all public health programs. Counties shall be required to submit SLIAG expenditure reports for public health services either quarterly or semiannually, as determined by the State Department of Health Services. The reporting form(s) shall provide for simplified yet, federally allowable, methodology(ies) for counties to distinguish the amount of SLIAG expenditures to be claimed against individual program categories.

(v) Service providers' financial responsiblity for audit exceptions shall be limited to failure to comply with federal law and regulations.

(w) The Health and Welfare Agency shall conduct directly, or through contractors, needs assessment to identify the major health, educational, and social services needed by the newly legalized population. The study shall focus on the areas of education, English proficiency, personal health care, job training, and public cash assistance, and shall identify services use and employment participation service barriers and gaps for this population or major subgroups therein. The Health and Welfare Agency shall submit a preliminary report on or before April 15, 1989, and shall complete this study and submit it to the Legislature on or before June 30, 1989.

(x) (1) The Health and Welfare Agency, with the assistance of the administering state departments, shall develop data collection criteria to ensure that providers can comply with federal documentation requirements and meet state and federal data reporting needs. The Health and Welfare Agency shall inform local agencies and providers serving ELA's regarding the extent to which SLIAG funds may be used to design, develop, implement, and maintain data collections systems.

(2) Because of the amount of funding involved, particular emphasis shall be place on county health services data collection. Counties, to the extent this information is not now available, shall implement, over an appropriate time period not to exceed three years, a data system consistent with the Medically Indigent Care Reporting System which shall provide, at a minimum, appropriate information regarding the following:

(A) Patient identification.

(B) Inpatient services rendered to ELA's.

(C) Outpatient prenatal and postpartum services.

(D) Outpatient emergency services.

(E) Contract services.

(3) Each MISP county is not in the Medically Indigent Care Reporting System shall report to the Health and Welfare Agency, no later than January 1, 1989, regarding its ability to provide this data, and a reasonable time frame within which it will be able to do so, and the cost of doing so. All counties receiving SLIAG

funds for Medically Indigent Services shall have an appropriate patient identification system in place no later than March 1, 1990.

(4) This patient identification system shall match federal documentation requirements and prevent duplicate claiming on behalf of individual beneficiaries.

(y) Of the $1,300,000 in administrative moneys for education appropriated in subdivision (a) (2) (D) (3), $60,000 shall be allocated to the California Postsecondary Education Commission for the collection of data regarding: (1) the number of individuals involved; (2) the language ability of these individuals; and (3) the number enrolled in classes. The California Postsecondary Education Commission shall report this information to the Legislature, together with recommendations for future educational funding, by January 1, 1989.

(yx) It is the intent of the Legislature to allow SLIAG funding for all adult educational programs permitted under federal law, including courses for which high school credit is granted.

(z) The State Department of Education shall permit local education providers to claim federally allowable startup costs, including curriculum development staff training administration, and outreach to initiate new English language and citizenship skills instructional programs incurred prior to December 1, 1988. These claims shall not exceed 5 percent of the federal cap, i.e., $500 multiplied by the number of eligible legalized aliens receiving educational services, except that private nonprofit programs may expend up to 12.5% for these purposes. The State Department of Education shall document such startup costs and report to the Health and Welfare Agency and to the Legislature by March 31, 1989.

CHAPTER 1207

An act to amend Sections 119, 2811.5, 2909, 3730, 4930, 5566.2, 6876, 6886.1, 6894.7, 6900, 6906, 6915.4, 6921, 6980.24, 6980.40, 7508.2, 7544.5, 7545, 7590.2, 9801, 9880.2, 9891.20, 9891.21, 9891.22, 9891.23, 9891.34, 9891.37, 9891.39, 9891.42, and 16240 of, to add Sections 143, 9807, 9808, and 9891.38 to, and to repeal Sections 6893.5, 6894.16, and 6923 of, the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 119 of the Business and Professions Code is amended to read:

119. Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

SEC. 1.5. Section 143 is added to the Business and Professions Code, to read:

143. (a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was duly licensed at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

(b) The judicial doctrine of substantial compliance shall not apply to this section.

(c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or profession pursuant to Section 121.

SEC. 2. Section 2811.5 of the Business and Professions Code is amended to read:

2811.5. (a) Each person renewing his or her license under Section 2811 shall submit proof satisfactory to the board that, during the preceding two-year period, he or she has been informed of the developments in the registered nurse field or in any special area of practice engaged in by the licensee, occurring since the last renewal

thereof, either by pursuing a course or courses of continuing education in the registered nurse field or relevant to the practice of the licensee, and approved by the board; or by other means deemed equivalent by the board.

(b) For purposes of this section, the board shall, by regulation, establish standards for continuing education. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to licensees including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension studies, and home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) This section shall not apply to licensees during the first two years immediately following their initial licensure in California or any other governmental jurisdiction.

(d) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for licensees residing in another state or country, or for reasons of health, military service, or other good cause.

This section shall become operative on July 1, 1978.

SEC. 3. Section 2909 of the Business and Professions Code is amended to read:

2909. Nothing in this chapter shall be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not offer to render or render psychological services as defined in Section 2903 to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:

(a) Persons who hold a valid and current credential as a school psychologist issued by the California Department of Education.

(b) Persons who hold a valid and current credential as a psychometrist issued by the California Department of Education.

(c) Persons employed in positions as psychologists or psychological assistants, or in a student counseling service, by accredited or approved colleges, junior colleges or universities; federal, state, county or municipal governmental organizations which are not primarily involved in the provision of direct health or mental health services. However, those persons may, without obtaining a license under this act, consult or disseminate their research findings and scientific information to other such accredited or approved academic institutions or governmental agencies. They

may also offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(d) Persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of professional experience of a type which the board determines will competently and safely permit the person to engage in the activities regulated by this chapter, if they are employed by nonprofit community agencies which receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services. Those persons shall be registered by the agency with the board at the time of employment and shall be exempt from this chapter for a maximum period of two years from the date of registration.

(e) This section shall become operative January 1, 1984.

SEC. 3.2. Section 3730 of the Business and Professions Code is amended to read:

3730. All certificates for the practice of respiratory care in this state shall be issued by the examining committee, and all applications for those certificates shall be filed with the examining committee. Except as otherwise required by the director pursuant to Section 164, the certificate issued by the examining committee shall describe the certificate holder as a "respiratory care practitioner certified by the Respiratory Care Examining Committee of the Medical Board of California."

Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a certificate without examination or to take an examination.

The application shall contain other information as the examining committee deems necessary to determine the qualifications of the applicant.

SEC. 3.4. Section 4930 of the Business and Professions Code is amended to read:

4930. Each member of the committee shall be appointed for a term of three years.

The terms of the members of the Acupuncture Committee appointed to fill the next vacancies which occur on or after June 1, 1991, shall expire as follows: one public member and one acupuncturist member on June 1, 1992, one public member, two acupuncturist members and one physician and surgeon member on June 1, 1993, two public members, two acupuncturist members and one physician and surgeon member on June 1, 1994. Thereafter, all appointments to the Acupuncture Committee shall be for a term of three years.

SEC. 3.6. Section 5566.2 of the Business and Professions Code is amended to read:

5566.2. (a) If a licensee or an unlicensed individual desires to contest a citation or the proposed assessment of a civil penalty

therefor, he or she shall, within 10 business days after service of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer or his or her designee. The executive officer or his or her designee shall hold, within 60 days from the receipt of the request, an informal conference. At the conclusion of the informal conference the executive officer may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty, and he or she shall state with particularity in writing his or her reasons for the action, and shall immediately transmit a copy thereof to the board, the licensee or unlicensed individuals, and the person who submitted the verified complaint. If the licensee or unlicensed individual desires to contest a decision made after the informal conference, he or she shall inform the executive officer in writing within five business days after he or she receives the decision resulting from the informal conference.

If the licensee or unlicensed individual fails to notify the executive officer in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made after an informal conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision made after an informal conference shall be deemed a final order of the board and shall not be subject to further administrative review.

(b) A licensee or an unlicensed individual may, in lieu of contesting a citation pursuant to this section, transmit to the board the amount assessed in the citation as a civil penalty, within 10 business days after service of the citation.

(c) If a licensee or an unlicensed individual has notified the executive officer in a timely manner that he or she intends to contest the decision made after the informal conference, the executive officer shall arrange a hearing before the board. After the hearing, the board shall issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief which shall include, but need not be limited to, a notice that the failure of a licensee or unlicensed individual to comply with any provision of the board's decision constitutes grounds for suspension, or denial of licensure, or both. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(d) After the exhaustion of the review procedures provided for in this section, the board may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the board, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(e) Failure of a licensee to pay a fine within 30 days of the date

of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(f) Any civil penalties received under this chapter shall be deposited in the California State Board of Architectural Examiners Fund.

SEC. 4. Section 6876 of the Business and Professions Code is amended to read:

6876. Each individual applicant for a license and each manager, partner of a partnership and officer of a corporation, or unincorporated association, shall submit with the application, unless they have previously been submitted and are on file with the bureau in a form sufficiently current in the judgment of the chief to meet the purposes of this section, one personal identification form provided by the chief upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints and personal description of each such person respectively.

Any person who knowingly falsifies the fingerprints or photographs submitted under this section is guilty of a felony.

SEC. 5. Section 6886.1 of the Business and Professions Code is amended to read:

6886.1. After a hearing the director may refuse to grant permission to take the collection agency examination, and to issue a qualification certificate if the applicant has:

(a) Committed or done any act which, if committed or done by a licensee, would be grounds for the suspension or revocation of a license.

(b) Committed or done any act involving dishonesty, fraud, or deceit whereby the applicant has been benefited or where some injury has been sustained by another.

(c) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or crime involving moral turpitude arising out of, or in connection with, or related to the activities of the person in a manner as to demonstrate his or her unfitness to be or become a licensee, 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 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the plea or verdict of guilty, or dismissing the accusation or information.

(d) Been convicted of illegally carrying or possessing a dangerous weapon.

(e) Been refused a license or registration under this chapter or had a license or registration revoked. The director shall not,

however, refuse to grant permission to take the collection agency examination or refuse to issue a qualification certificate to an applicant on the ground specified in this subdivision if subsequent to the refusal or revocation referred to in this subdivision the director issued a license or certificate of registration to the applicant.

(f) Been an officer, director, partner, or manager of any person who has been refused a license under this chapter or whose license has been revoked. The director shall not, however, refuse to grant permission to take the collection agency examination or refuse to issue a qualification certificate to an applicant on the ground specified in this subdivision if subsequent to the refusal or revocation referred to in this subdivision the director issued a license to the person referred to herein.

(g) Falsified or omitted any of the information submitted to the chief in support of an application under this chapter.

(h) Impersonated, or permitted or aided and abetted another to impersonate, a law enforcement officer or employee of the United States, a state, or any political subdivision thereof.

(i) Used a badge in connection with his or her employment, or made any statement in connection with his or her employment, with the intent to give an impression that he or she was a law enforcement officer of the United States, a state, or any political subdivision thereof, or used with intent to deceive the public, any uniform or insignia in connection with his or her employment likely to be confused with that of any law enforcement officer of the United States, a state, or any political subdivision thereof.

(j) Been adjudicated as a bankrupt within two years preceding the time of filing the application.

(k) Been an officer, director, partner, or manager of any person who has been refused a license under Chapter 11 (commencing with Section 7500) of Division 3.

(*l*) Been refused a license or registration, or had a license or registration revoked under Chapter 11 (commencing with Section 7500) of Division 3.

Nothing contained in this section shall preclude the applicant from showing rehabilitation.

SEC. 6. Section 6893.5 of the Business and Professions Code is repealed.

SEC. 7. Section 6894.7 of the Business and Professions Code is amended to read:

6894.7. After a hearing the director may refuse to register an employee, or may suspend or revoke a previous registration, if the individual has committed any act constituting grounds for denial, suspension, or revocation of a license.

If the director determines that it is in the public interest to grant probationary registration to a person whose application for registration is subject to denial under this section, he or she may register such person on terms and conditions sufficient in his or her judgment to protect the public interest. The director may suspend

or revoke a probationary registration if, after a hearing, he or she determines that the individual has violated any of the terms and conditions of registration or any provision of this chapter or of the rules and regulations adopted thereunder. The granting of a probationary registration shall not in any way restrict the director's authority under this chapter to refuse to grant permission to take the collection agency examination, to issue a qualification certificate, or to issue a license.

SEC. 8. Section 6894.16 of the Business and Professions Code is repealed.

SEC. 9. Section 6900 of the Business and Professions Code is amended to read:

6900. Upon the filing of notice with the chief by any surety company of its withdrawal as the surety of any licensee the chief shall forthwith give notice to the licensee of the withdrawal, which notice shall be by registered or certified mail with request for return receipt and shall be addressed to the licensee at his or her main office as shown by the records of the chief. The license of any licensee shall be automatically suspended by operation of law 60 days after the chief sends written notice of the termination of the bond of the surety company and notice that the licensee is required to file a new bond unless, prior to the expiration of the 60 days from the chief's written notice, a new bond has been filed with the chief.

SEC. 10. Section 6906 of the Business and Professions Code is amended to read:

6906. The chief may refuse to issue a license if the applicant, or any partner, director, shareholder, officer, or trustee thereof, or any director, shareholder, or officer of a corporation which is a shareholder thereof, or the qualified certificate holder who is to be in charge of the business of the applicant or in charge of any office thereof:

(a) Has had a license revoked for cause, or has been a partner, director, shareholder, officer, trustee, or qualified certificate holder of a partnership, corporation, or unincorporated association, the license of which has been revoked for cause.

(b) Has been disqualified from further employment in the collection agency business pursuant to this chapter.

(c) Has committed any act which would justify refusal of permission to take the collection agency examination and to issue a qualification certificate under Section 6886.1.

The chief shall not issue a license unless the business of the applicant is to be placed under the active charge of a qualified certificate holder.

SEC. 11. Section 6915.4 of the Business and Professions Code is amended to read:

6915.4. This article shall not preclude the director from inspecting, examining, or investigating the business, including the books, accounts, records, and files used by the licensee, as they pertain to the licensee's trust account and collection records only,

unless there is a substantial trust deficiency, in which case, the audit may be extended to all the business records of the licensee, on such basis and on such occasion as shall be necessary to insure compliance with this chapter and any rule or regulation adopted by the director pursuant to this chapter. For the purposes of this provision, and limited to the inspection, examination, or investigation as provided above, the director shall have free access to the offices and places of business, books, accounts, records, papers, files, safes, and vaults of all licensees.

When an audit is performed as a consequence of information disclosed by the trust reconciliation statements or the bank statements filed pursuant to Section 6915.1, or if a second audit is required due to the unavailability of records required to be maintained pursuant to Section 6915 or regulations promulgated in accordance with Section 6863, the cost of the second audit shall be charged to and paid by the licensee at a rate of twenty-one dollars ($21) per audit hour, subject to a maximum of seven hundred fifty dollars ($750) for any one audit. "Audit hour" means one auditor working one hour.

Prior to the conduct of a second audit, the licensee shall be given written notice of the discrepancies or violations and allowed 15 days from the receipt of the notice to submit a written reply which provides information that eliminates the need for a second audit.

Upon completion of a second audit conducted pursuant to this section, the bureau shall provide written notice to the licensee of the charge due. The failure of the licensee to pay the charge within 30 days after the date of the bureau's notice constitutes grounds for the revocation of his or her license.

No licensee shall be required to pay a charge for any inspection, examination, investigation, or audit of his or her business under this chapter except to the extent provided for by this section.

SEC. 12. Section 6921 of the Business and Professions Code is amended to read:

6921. Every office, whether a main or branch office, shall be under the active charge of a qualified certificate holder, who shall be in charge of the fiscal as well as the administrative functions of the office at all times.

SEC. 13. Section 6923 of the Business and Professions Code is repealed.

SEC. 14. Section 6980.24 of the Business and Professions Code is amended to read:

6980.24. (a) Every permit which expires on or after January 1, 1991, shall be placed on a cyclical renewal and shall expire two years following the date of issuance or the assigned renewal date. In order to implement the cyclical renewal, the population of permittees shall be divided into 24 equal groups, the permits of each group to expire on the last day of each consecutive month. Notwithstanding any other provision of law, the bureau shall have the authority to extend or shorten the first permit period following January 1, 1991, and to

prorate the required permit fee in order to implement this cyclical renewal. To renew an unexpired permit, the permittee shall apply for renewal on a form prescribed by the director and pay the renewal fee prescribed by this chapter.

(b) An expired permit may be renewed provided the permittee files an application for renewal on a form prescribed by the director along with the renewal and delinquency fees pursuant to Sections 6980.40 and 163.5 within one year following the date on which the permit expires.

SEC. 15. Section 6980.40 of the Business and Professions Code is amended to read:

6980.40. The amount of fees to obtain or renew a permit under this chapter are as follows:

(a) The initial application and permit fee is fifty-five dollars ($55).

(b) The fee for renewal of a locksmith permit is forty-two dollars ($42).

(c) All applicants seeking a permit pursuant to this chapter shall also remit to the bureau the fingerprint fee that is charged to the bureau by the Department of Justice.

SEC. 16. Section 7508.2 of the Business and Professions Code is amended to read:

7508.2. The director may assess administrative fines for any of the following prohibited acts:

(a) Recovering personal property or making any money demand in lieu thereof, including, but not limited to, personal property registered under the Vehicle Code, which has been sold under a security agreement before a signed or telegraphic authorization has been received from the legal owner, lienholder, or lessor of the personal property. A telephonic assignment is acceptable if the legal owner, lienholder, or lessor is known to the licensee and a written authorization from the legal owner, lienholder, or lessor is received by the licensee within 10 working days or a request by the licensee for a written authorization from the legal owner, lienholder, or lessor is made in writing within 10 working days. Referrals of assignments from one licensee to another licensee with confirmation to the legal owner, lienholder, or lessor informing the legal owner, lienholder, or lessor of the name, address, and license number of the licensee to whom the referral was made are acceptable. The referral of an assignment shall be made under the same terms and conditions as in the original assignment. The fine shall be twenty-five dollars ($25) for each of the first five violations and one hundred dollars ($100) for each violation thereafter, per audit.

(b) Using personal property or personal effects, which have been recovered, for the personal benefit of a licensee, or officer, partner, manager, or employee of a licensee. The fine shall be twenty-five dollars ($25) for the first violation and one hundred dollars ($100) for each violation thereafter. This subdivision does not apply to personal effects disposed of pursuant to subdivision (c) of Section 7507.9.

(c) Selling personal property recovered under the provisions of

this chapter, except with written authorization from the legal owner or mortgagee thereof. The fine shall be one hundred dollars ($100) for the first violation and five hundred dollars ($500) for each violation thereafter, per audit.

(d) Failing to remit all money due clients within 10 working days after finalization of the sale of personal property. The licensee shall deposit all money received in the form of cash or negotiable instruments made payable to the licensee for money due clients from the sale of personal property which has been repossessed in a trust account within five working days, and the money shall be withdrawn only for remittance to the client and for the payment of amounts due the licensee. The fine shall be two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each violation thereafter. For purposes of this subdivision, "finalization of sale" means the time when the documents of title or ownership which permit transfer of title from the legal owner to the purchaser are received by the repossession agency.

(e) Failing to remit moneys collected in lieu of repossession or redemption to a client within 10 working days after receipt of the moneys. The fine shall be two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each violation thereafter.

(f) Failing to deliver to a client any negotiable instrument received by the licensee made payable to the client within 10 working days of receipt of the negotiable instrument. No licensee, manager, or employee of a licensee shall accept a negotiable instrument made payable to a client unless they have authorization from the client to accept such a negotiable instrument. The fine shall be two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each violation thereafter.

(g) Unlawfully entering any private building or secured area without the consent of the owner, or of the person in legal possession thereof, at the time of repossession. The fine shall be five hundred dollars ($500) for each violation.

(h) Committing unlawful assault or battery on another person. The fine shall be five hundred dollars ($500) for each violation.

(i) Falsification or alteration of an inventory. The fine shall be twenty-five dollars ($25) for each violation.

(j) Soliciting from the legal owner the recovery of specific personal property registered under the Vehicle Code or under the motor vehicle licensing laws of other states after the property has been seen or located on a public street or on public or private property without divulging the location of the vehicle. The fine shall be one hundred dollars ($100) for the first violation and two hundred fifty dollars ($250) for each violation thereafter.

SEC. 17. Section 7544.5 of the Business and Professions Code is amended to read:

7544.5. No person licensed as a private patrol operator shall do any of the following:

(a) Fail to properly maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee or of any employee while on duty. Within seven days after a licensee or his or her employees discover that a deadly weapon which has been recorded as being in his or her possession has been misplaced, lost, or stolen, or in any other way missing, the licensee or his or her manager shall mail or deliver to any local law enforcement agency who has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Fail to properly maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Fail to properly maintain an accurate and current record of proof of completion by each employee of the licensee of the course of training in the exercise of the power to arrest as required by Section 7545.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing such employee at a duty station.

(e) Fail to either certify proof of current and valid registration for each employee who is subject to registration or fail to require an employee to complete an application for registration within three working days after employing an individual who does not possess a current and valid registration from the bureau.

(f) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that such employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that such employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that such employee is proficient in the use of that particular deadly weapon.

(g) Fail to deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the

discharge, suspension, or reprimand of a security guard by his or her employer. Such report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) Fail to notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

SEC. 18. Section 7545 of the Business and Professions Code is amended to read:

7545. (a) Every licensee and any person employed and compensated by a licensee, other lawful business or public agency as a security guard or patrolperson, and who in the course of that employment or business carries a firearm, shall complete a course of training in the exercise of the powers to arrest and a course of training in the carrying and use of firearms. This subdivision shall not apply to armored vehicle guards hired prior to January 1, 1977. Armored vehicle guards hired on or after January 1, 1977, shall complete a course of training in the carrying and use of firearms, but shall not be required to complete a course of training in the exercise of the powers to arrest. The course of training in the carrying and use of firearms shall not be required of any employee who is not required or permitted by a licensee to carry or use firearms. The course in the carrying and use of firearms and the course of training in the exercise of the powers to arrest shall meet the standards which shall be prescribed by the Department of Consumer Affairs. The department shall encourage restraint and caution in the use of firearms.

(b) No uniformed employee of a licensee shall carry or use any firearm unless the employee has in his or her possession a valid firearm qualification card.

SEC. 19. Section 7590.2 of the Business and Professions Code is amended to read:

7590.2. An "alarm company operator" means any person who, for any consideration whatsoever, engages in business or accepts employment to install, maintain, alter, sell on premises, monitor, or service alarm systems or who responds to alarm systems except for any alarm agent. "Alarm company operator," however, does not include any entity which is retained by a licensed alarm company operator to monitor alarm systems for the licensed alarm company operator, provided the entity does not perform any other duties within the definition of an alarm company operator.

A person licensed as an alarm company operator may not conduct any investigation or investigations except those that are incidental to personal injury, or the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which he or she has been hired or engaged to protect.

SEC. 20. Section 9801 of the Business and Professions Code is amended to read:

9801. The following terms as used in this chapter have the meaning expressed in this section:

(a) "Person" includes firm, partnership, association, or corporation.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

(d) "Bureau" means the Bureau of Electronic and Appliance Repair.

(e) "Chief" means the Chief of the Bureau of Electronic and Appliance Repair.

(f) "Board" means the Electronic and Appliance Repair Advisory Board.

(g) "Service dealer" means a person who, for compensation, engages in, or holds himself or herself out to the public as offering services in, the business of:

(1) Repairing, servicing, or maintaining television, radio, audio or video recorders or playback equipment, video cameras, video games, video monitors, or computer systems normally used or sold for personal, family, or household use.

(2) Installing, repairing, servicing, or maintaining radios, antennas, audio recorders, audio playback equipment, or burglar alarm systems normally used or sold for use in private motor vehicles.

(3) Installing, repairing, servicing, or maintaining television or radio receiver antennas or direct satellite signal receiving equipment located on or adjacent to a residence and not involving a function which is subject to and regulated under the provisions of Chapter 9 (commencing with Section 7000).

(4) Repairing, servicing, or maintaining major home appliances.

(h) "Equipment" for the purposes of this chapter means a set, appliance, antenna, rotator, and accessories.

(i) "Set" means any television, radio, audio or video recorder or playback equipment, video camera, video game, video monitor or computer system normally used or sold for personal, family, or household use.

(j) "Appliance" or "major home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, trash compactor, or room air conditioner normally used or sold for personal, family, or household use.

(k) "Antenna" or words of like import, means a resonant device designed especially for the purpose of capturing electromagnetic energy transmitted by direct satellite or commercial radio or television broadcasting facilities. An antenna, and its associated accessories, is not deemed to be a part of a set, and shall be considered, under this section, to be located outside or in the attic of a residence.

(*l*) "Rotator," when used in connection with an antenna installation or repair, means an electromechanical device operated from a remote location to rotate an antenna on a horizontal plane. A rotator and its associated accessories is not deemed to be a part of

a set and shall be considered under this section, with the exception of the directional control unit, to be located outside or in the attic of a residence.

(m) "Accessories," when used in connection with an antenna or rotator installation or repair, means masts, towers, clamps, guy wires, eye hooks, standoff insulators, roof saddles, vent pipe mounts, chimney mount kits, signal amplifiers/boosters, multiset couplers, transmission lines, control cables, directional control units, and such other devices as may be used from time to time to effect such installation or repair.

(n) "Computer system" means a central processing unit which performs data manipulation functions, and any associated peripheral devices, including, but not limited to, keyboards, display terminals, printers, or disk drives.

(o) "Video game" means any electronic amusement device which utilizes a computer, microprocessor, or similar electronic circuitry and its own cathode ray tube or a television set or a monitor.

(p) "Complainant" means the customer of a service dealer who has complained to the director concerning such service dealer.

(q) "Direct satellite signal receiving equipment" means receivers, down converters, amplifiers, and audio or video processors related to the reception of audio, video, or data signals broadcasted or rebroadcasted by communication satellites located in space.

(r) "Electronic repair industry" means those activities defined in paragraphs (1), (2), or (3) of subdivision (g).

(s) "Appliance repair industry" means those activities defined in paragraph (4) of subdivision (g).

SEC. 21. Section 9807 is added to the Business and Professions Code, to read:

9807. No person registered under this chapter shall be required to be registered pursuant to Chapter 20.3 (commencing with Section 9880) where that person's activities are within the scope of his or her registration and consist of installing radios, antennas, audio recorders, audio playback equipment, and burglar alarm systems normally used or sold for use in private motor vehicles.

SEC. 22. Section 9808 is added to the Business and Professions Code, to read:

9808. No person registered pursuant to Chapter 20.3 (commencing with Section 9880) shall be required to register under this chapter where that person's activities are within the scope of his or her registration and consist of installing radios, antennas, audio recorders, audio playback equipment, and burglar alarm systems normally used or sold for use in private motor vehicles.

SEC. 23. Section 9880.2 of the Business and Professions Code is amended to read:

9880.2. The following persons are exempt from the requirement of registration:

(a) Any employee of an automotive repair dealer if the employee repairs motor vehicles only as an employee.

(b) Any person who solely engages in the business of repairing the motor vehicles of a single commercial, industrial, or governmental establishment, or two or more establishments related by common ownership or corporate affiliation.

(c) Any person who is registered pursuant to Chapter 20 (commencing with Section 9800) where the persons' work is limited to the installation or replacement of a motor vehicle radio, antenna, audio recorder, audio playback equipment, or burgler alarm.

SEC. 24. Section 9891.20 of the Business and Professions Code is amended to read:

9891.20. (a) Every tax preparer shall register upon forms prescribed by the administrator. The forms shall contain sufficient information to identify the tax preparer, including name, address, identification numbers, and other identifying data which is prescribed by the administrator.

(b) Any tax preparer maintaining more than one tax preparer location shall be permitted to file a single form which, in addition to the information required in subdivision (a), clearly designates each location, identifying one location as the principal location and all others as additional locations, and the individual or individuals in charge of each location. The form shall also provide for information required in subdivisions (b) and (c) of Section 9891.22.

(c) Every person engaged in the activity of a tax preparer, or tax interviewer, as defined in this section and required to register under this section shall, as a precondition of registration, comply with all of the following requirements:

(1) Be at least 18 years of age.

(2) Possess a high school diploma or have passed an equivalency examination.

(3) Present evidence to the administrator of either of the following:

(A) Completion within the previous 18 months of not less than 60 hours of instruction in basic personal income tax law, theory and practice. The instruction shall be given in subjects and in a setting approved by the administrator or the State Board of Education.

(B) At least two years experience in the preparation of personal income tax returns acceptable to the administrator as being the equivalent of 60 hours of instruction in personal income tax law. Tax preparation performed in situations that violate this chapter by an individual who is neither registered nor exempted, may not be used toward the qualifying experience needed for registration as a tax preparer or tax interviewer under this subparagraph.

(d) If any of the information required by this section changes, the tax preparer shall promptly notify the administrator of the changes.

(e) The requirement that a tax preparer possess a high school diploma or pass an equivalency examination as set forth in paragraph (2) of subdivision (c) shall not apply to any person who first applied for registration under this section prior to January 1, 1987, who was lawfully engaged in the activity of tax preparation or tax

interviewing in California prior to November 1, 1983, and certifies to that fact under penalty of perjury, and who provides sufficient documentation as may be required by the administrator, on forms prescribed by the administrator.

SEC. 25. Section 9891.21 of the Business and Professions Code is amended to read:

9891.21. (a) Any person engaged in the activity of a tax preparer, or tax interviewer, as defined in this chapter, and not exempted from this chapter under Section 9891.2, shall be required to register with the administrator of the program annually and pay fees as designated by the administrator under authority of Article 6 (commencing with Section 9891.40).

(b) Any person eligible for exemption from this chapter under Section 9891.2 may voluntarily register by application to the administrator and payment of appropriate fees. Those voluntary registrants shall be required to comply with all requirements as pertain to nonvoluntary registrants.

SEC. 26. Section 9891.22 of the Business and Professions Code is amended to read:

9891.22. Any person who is registered as a tax preparer pursuant to this chapter shall:

(a) Annually pay by October 31, the renewal fee specified in Section 9891.42 and billed to registrant at his or her last known address by the administrator on or before September 1 of each year.

(b) Furnish to the administrator by October 31 of each year proof that surety bond or equivalent coverage as required for the ensuing calendar year has been acquired.

(c) Furnish to the administrator by October 31 of each year proof that continuing education requirements as required have been met.

(d) Notify the administrator within 30 days of any change in business address.

Upon receipt of the form properly filled out, and receipt of the required fee, and receipt of proof of deposit of the bond required by this chapter, if the administrator determines that the applicant is eligible, he or she shall validate the registration and send a proof of valid registration to the tax preparer.

SEC. 27. Section 9891.23 of the Business and Professions Code is amended to read:

9891.23. (a) Every registration shall cease to be valid on October 31, unless the tax preparer has paid the renewal fee required by this chapter.

(b) Except as otherwise provided in this chapter, an expired registration may be renewed at any time within three years after its expiration on filing of: (1) application for renewal on a form prescribed by the administrator; (2) payment of any delinquency fees as prescribed by this chapter; (3) proof of compliance with the continuing education requirements since the expiration of the registration; and (4) if the registrant or certificate holder has been practicing in this state with an expired or delinquent license, then he

or she shall pay all accrued and unpaid renewal fees.

SEC. 28. Section 9891.34 of the Business and Professions Code is amended to read:

9891.34. (a) Any registrant otherwise in good standing may exempt himself or herself from subsequent year bonding and registration fee and continuing education requirements by notifying the administrator of the desire for that status by October 31 of any year.

(b) No registrant in inactive status shall engage in activities of a tax preparer, or tax interviewer unless he or she is qualified for exemption from this chapter under Section 9891.2.

(c) Any registrant in inactive status may be returned to active status by complying with applicable bonding fees and continuing education requirements for the year in which registration to active status is desired, as well as other requirements as may be specified by the administrator.

SEC. 29. Section 9891.37 of the Business and Professions Code is amended to read:

9891.37. The administrator shall issue certificates of registration to registrants on the following basis:

(a) For an initial period which shall last no later than the next subsequent October 31 after the date of initial registration upon a showing by the registrant of compliance with bonding requirements, satisfactory fulfillment of minimum registration requirements as listed in subdivision (c) of Section 9891.20, and the payment of required fees.

(b) For subsequent one-year periods upon showing of continued compliance with bonding requirements, payment of required fees, and compliance with continuing education requirements.

(c) A tax interviewer certificate under sponsorship and supervision of a tax preparer, which certificate shall be valid as long as all of the following requirements are met:

(1) The sponsorship of the tax interviewer is continued by the tax preparer and the administrator shall have approved of the tax interviewer's compliance with minimum registration requirements as listed in subdivision (c) of Section 9891.20.

(2) Registration of the tax preparer remain valid.

(3) Continuing education and fee requirements as specified in Sections 9891.39 and 9891.42 are met.

(4) No contrary action has been taken by the administrator.

SEC. 30. Section 9891.38 is added to the Business and Professions Code, to read:

9891.38. A registration which is not renewed within three years after its expiration may not be renewed, restored, reissued or reinstated thereafter, but the registrant may apply for and obtain a new registration if:

(a) No fact, circumstance or condition exists which, if the registration were issued, would justify its revocation or suspension.

(b) The applicant pays all of the fees which would be required of

the applicant if the applicant were applying for the first time.

(c) The applicant meets the requirements for registration which would be required of the applicant if the applicant were then applying for the first time, or otherwise establishes to the satisfaction of the administrator that the applicant is qualified to be a tax preparer.

SEC. 31. Section 9891.39 of the Business and Professions Code is amended to read:

9891.39. (a) Commencing January 31, 1983, the administrator of the program shall evaluate and consider, with the advice of the State Tax Preparer Advisory Committee, courses and activities eligible for continuing education credit related to the tax preparation field submitted to him or her for approval and shall either endorse or decline to endorse those programs within 90 days of submission. A listing of approved courses and activities shall be made available upon request to registrants and shall be updated monthly.

(b) Commencing November 1, 1986, registrants under the program shall be required to establish by October 31 of each registration year that they have successfully completed at least 20 hours of continuing education in courses approved for continuing education by the administrator.

SEC. 32. Section 9891.42 of the Business and Professions Code is amended to read:

9891.42. The fees prescribed by this chapter shall be set by the administrator in an amount estimated to provide for the administration of this chapter within the limits of the following schedule:

(a) The tax preparer registration fee for tax preparers and tax interviewers shall be established by the administrator at a sum not more than fifty dollars ($50) per registrant. However, no single tax preparer shall be required to pay registrant fees on behalf of itself and associated tax interviewers in excess of one thousand five hundred dollars ($1,500) in a single calendar year.

(b) If a tax preparer maintains more than one tax preparer location within this state, an additional fee shall be established by the administrator at a sum not more than twenty-five dollars ($25) for each additional location.

(c) The annual renewal fees for a tax preparer registration shall be established by the administrator at amounts not to exceed the schedule for registration fees, if the registration is renewed prior to its expiration date.

(d) The penalty fee for renewal of a registration that is not renewed prior to its expiration date shall be the lesser of twenty-five dollars ($25) or 50 percent of the renewal fee required for a registration renewal prior to its expiration date.

SEC. 33. Section 16240 of the Business and Professions Code is amended to read:

16240. Every person who practices, offers to practice, or advertises any business, trade, profession, occupation, or calling, or

who uses any title, sign, initials, card, or device to indicate that he or she is qualified to practice any business, trade, profession, occupation, or calling for which a license, registration, or certificate is required by any law of this state, without holding a current and valid license, registration, or certificate as prescribed by law, is guilty of a misdemeanor.

SEC. 34. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1208

An act to amend Sections 1513.1, 1821, 1827.5, 1851, 1851.5, and 1875 of, and to add Section 1831 to, the Probate Code, relating to conservatorships, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1990. Filed with Secretary of State September 24, 1990.]

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

NOTE: See Stats. 1990, Ch. 79 for SECTION 1.

SEC. 2. Section 1821 of the Probate Code, as added by Section 4 of Chapter 1080 of the Statutes of 1989, is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the conditions set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the conditions set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information, if it would serve the interests of the conservatee. The county clerk shall make provisions for the limitation of the supplemental information exclusively to persons entitled to its receipt.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree. If no spouse of the proposed conservatee, or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest he establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Section 416.8 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information which is required pursuant to this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 3.

SEC. 3.5. Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) In the case of any proceeding to establish a conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for conservatorship, a proposed conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court. The report shall include a description of the proposed conservatee's specific areas, nature, and degree of disability. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed conservatee.

(b) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed conservatee.

(2) The attorney, if any, for the proposed conservatee.

(3) If the petitioner is not the proposed conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

(c) The report referred to in subdivision (a) shall be confidential and shall be made available only to parties listed in subdivision (b) unless the court, in its discretion, determines that the release of the report would serve the interests of the conservatee who is developmentally disabled. The county clerk shall make provision for the limitation of the report exclusively to persons entitled to its receipt.

NOTE: See Stats. 1990, Ch. 79 for SEC. 4 through SEC. 7.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 1827.5 of the Probate Code proposed by both this bill and SB 2439. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 1827.5 of the Probate Code, and (3) this bill is enacted after SB 2439, in which case Section 1827.5 of the Probate Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 2439, at which time Section 3.5 of this bill shall become operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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. 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 revise the law respecting conservatorships to protect both conservatees and persons affected by the conservatorship as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1209

An act to add Section 13308.05 to the Government Code, relating to reductions in state appropriations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 13308.05 is added to the Government Code, to read:

13308.05. For purposes of Section 13308, "workload budget" means the budget year cost of currently authorized services, adjusted for changes in enrollment, caseload, or population, or all of these changes and any of the following:

(a) Statutory cost-of-living adjustments.

(b) Chaptered legislation.

(c) One-time expenditures.

(d) The full-year costs of partial-year programs.

(e) Costs incurred pursuant to constitutional requirements.

(f) Federal mandates.

(g) Court-ordered mandates.

(h) State employee merit salary adjustments.

(i) State agency operating expense and equipment cost adjustments to reflect price increases.

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

In order for this act to apply to the current fiscal year, it is necessary for it to go into immediate effect.

CHAPTER 1210

An act to add Sections 11005.6 and 11005.7 to, and to add Chapter 6.5 (commencing with Section 8549) to Division 1 of Title 2 of, the Government Code, relating to state operations.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

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

(a) That the business of the state may be significantly disrupted by occurrences such as fires, earthquakes, and toxic spills.

(b) Although response plans have been developed by federal, state, and local agencies to deal with the health and safety aspects of disasters, there is often a management gap that develops between health and safety responses and those actions vital to protecting the security of state operations and resuming business with a minimum of delay.

(c) The failure to resume state services is, itself, a potential health and safety threat to those who depend upon those services.

(d) The unnecessary curtailment of state regulatory action jeopardizes enforcement of laws intended to protect the public and to promote fair business competition.

SEC. 2. It is the intent of the Legislature, through this act, to establish an emergency response team for state operations for the purpose of improving the ability of state agencies to resume business in a safe manner and with a minimum of delay after a business interruption.

SEC. 3. Chapter 6.5 (commencing with Section 8549) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 6.5. EMERGENCY RESPONSE TEAM FOR STATE OPERATIONS

Article 1. Definitions

8549. The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

8549.1. "Asbestos release" means any dislodged building construction material that contains any amount of asbestos fibers.

8549.2. "Act of terrorism" means any unlawful harm, attempted harm, or threat to do harm to, any state employee, state property, or the person or property of any person on the premises of any state-occupied building or other property leased or owned by the state.

8549.3. "Business interruption" means any unplanned occurrence which causes the stoppage of the operation of any state agency in such a manner that it cannot accomplish its mission and goals.

8549.4. "Director" means the Director of the Office of Emergency Services.

8549.5. "Public transportation interruption" means the complete loss of public transportation services, including, but not limited to, the loss of transportation services due to the closure of a bridge or major highway, but does not include the loss of a personal vehicle.

8549.6. "Responsible administrator" means the agency emloyee who has onsite authority to direct state agency employees.

8549.7. "State-occupied building" means any building owned or leased by the state.

8549.8. "Team" means the Emergency Response Team for State Operations.

Article 2. Emergency Response Team

8549.10. There is in state government the Emergency Response Team for State Operations.

8549.11. (a) The team shall be comprised of all of the following:

(1) The Chief of the California State Police Division of the Department of General Services.

(2) The Chief of the Occupational Safety and Health Division of the Department of Industrial Relations.

(3) The Commissioner of the California Highway Patrol.

(4) The Director of the Office of Emergency Services.

(5) The Director of Finance.

(6) The Director of General Services.

(7) The Director of Health Services.

(8) The State Fire Marshal.

(9) The Director of Forestry and Fire Protection.

(b) The team shall be chaired by the Director of General Services.

8549.12. The team shall meet not later than January 31, 1991, for the purpose of organization.

8549.13. The team shall work to improve the ability of state agencies to resume operations in a safe manner and with a minimum of delay if their operations are significantly interrupted by a business interruption.

8549.14. Each team member shall designate not less than one member of his or her staff to serve as a team representative.

8549.15. Each team member shall designate not less than one staff member from the state agency under the supervision of the team member to provide clerical support for the team.

8549.16. The Director of the Office of Emergency Services shall define the equipment necessary to ensure the full functioning of each team member.

Article 3. Business Resumption Plans

8549.20. (a) The Department of General Services, in cooperation and consultation with the team, shall develop model business resumption plans which detail how a responsible administrator should direct state employees and state agency operations when, including, but not limited to, any of the following business interruptions affect a state agency:

(1) Act of terrorism.

(2) Asbestos release.

(3) Earthquake.

(4) Fire.

(5) Loss of electronic information.

(6) Loss of all or a portion of state-occupied space for a period of one hour or more.

(7) Major theft of equipment or documents.

(8) Public transportation interruption of five days or more which impedes the ability of agency employees to commute to work.

(9) Toxic spill.

(b) The team may include, in the development of model business interruption plans, other business interruptions in addition to those listed in subdivision (a).

8549.21. In developing model business resumption plans, the team shall identify emergency response plans and actions which are required by federal or state law.

8549.22. The team shall, not later than July 1, 1991, furnish each state agency with the model business resumption plan developed pursuant to this article.

SEC. 4. Section 11005.6 is added to the Government Code, to read:

11005.6. Any lease of property by a state agency for warehouse or office uses which is entered into or renewed on or after January 1, 1991, shall contain all of the following:

(a) The state agency leasing space through any contract shall have access at all times to the leased facilities for the purpose of securing

documents and information deemed vital to the continuation of the business of the state, subject to a good faith effort by the agency to obtain the building owner's permission when exercising its right of access.

(b) Provisions for late payments, interest penalties on late payments, and eviction procedures.

SEC. 5. Section 11005.7 is added to the Government Code, to read:

11005.7. The Department of General Services on or before July 1, 1991, shall develop procedures and policies to expedite normal procedures for purchasing, leasing, and contracting during a business interruption.

CHAPTER 1211

An act to add and repeal Chapter 12 (commencing with Section 9774) of Part 1 of Division 8.5 of the Welfare and Institutions Code, relating to aging.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Existing long-term care public policy is designed to encourage development of community-based health and supportive services, such as adult day health care and adult social day care, to enable frail elderly and functionally impaired adults to reside in the least restrictive environment possible.

(b) Significant demographic factors which affect the need for noninstitutional long-term care include the following:

(1) Cost containment strategies are shifting health care delivery from inpatient to outpatient settings.

(2) Approximately one out of every five persons aged 65 years and older, living at home or in a residence other than a nursing home, requires some type of long-term care.

(3) The fastest growing segment of the population, those aged 85 years and older, are the most likely to suffer brain impairment from such causes as Alzheimer's disease and stroke.

(4) Women constitute 77 percent of adult children caring for aging parents and 64 percent of spouses providing informal care.

(5) The increasing percentage of women in the work force and the decreasing size of the American family is reducing the availability of adult female children who have been the traditional unpaid caregivers.

(c) Despite these facts, the growth of adult day services programs has been significantly lower than projected. Studies have shown that

the causes for this slow growth are complex, but include the following:

(1) Inadequate public reimbursement.

(2) Lack of third-party reimbursement.

(3) Limited access to capital for startup.

(4) Limited technical assistance and support for providers.

(5) Lack of public and professional awareness and understanding of the services.

(6) Public policies historically favoring acute and institutional care, and underdevelopment of complementary community-based services.

(d) These barriers to growth have created an undersupply of adult day services programs in California to meet the projected health and social service needs of an aging population.

(e) It is the intent of the Legislature to address these urgent issues by establishing the California Adult Day Services Resource Development Project.

SEC. 2. Chapter 12 (commencing with Section 9774) is added to Part 1 of Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 12. THE LA FOLLETTE CALIFORNIA ADULT DAY SERVICES RESOURCE DEVELOPMENT PROJECT

9774. (a) There is hereby established a pilot project known as the La Follette California Adult Day Services Resource Development Project. The goal of the project is to increase the availability of adult day services sites by doing all of the following:

(1) Expanding existing capacity of licensed facilities where feasible.

(2) Promoting the establishment of new licensed facilities.

(3) Increasing consumer, employer, and health professionals' awareness and understanding of the purpose and benefits of adult day services.

(b) It is the intent of the Legislature to promote and foster the project in cooperation with private corporations and local governments. Therefore, the project shall match each dollar of state funds with two dollars ($2) from other public or private agencies.

(c) For purposes of this chapter, the definition of "adult day services" in subdivision (c) of Section 9772 shall apply.

9774.05. For the purposes of this chapter, the La Follette California Adult Day Services Resources Development Project means a pilot project modeled on the California Child Care Initiative Project, that shall do all of the following:

(a) Research and design successful strategies to increase or add program capacity where need is identified.

(b) Identify, train, and provide technical assistance to potential providers.

(c) Assist existing providers to increase appropriate utilization, expand capacity, or improve the quality of services.

(d) Facilitate the provider licensure or certification process by coordinating with local and state licensing authorities.

(e) Develop, catalog, and collect educational and reference materials to assist providers.

(f) Develop a marketing approach to educate targeted public and professional audiences.

(g) Facilitate coordination and use of existing resources, such as community colleges, universities, adult education, and senior information, referral, and social services agencies.

(h) Coordinate with the department to avoid unnecessary duplication.

9774.1. (a) The Director of the Department of Aging shall contract with a private nonprofit organization to conduct the activities specified in Section 9774.05.

(b) In selecting the private nonprofit organization to conduct the resource development project, the director shall give priority to any organization which meets all of the following criteria:

(1) The organization has an established record of experience providing training, information, and technical assistance to providers of adult day services.

(2) The organization has demonstrated ability to collaborate with statewide organizations that provide long-term care services.

(3) The organization has experience in working with state departments, agencies, and commissions.

(4) The organization has demonstrated the ability to obtain private foundation funding.

9774.15. (a) The contractor selected pursuant to Section 9774.1 to conduct the resource development project shall obtain private funds to initiate the project.

(b) The resource development may expand in its second year of state funding to include one to three pilot sites.

(c) The purpose of a local pilot site is to implement the strategies developed by the contractor to increase or add to program capacity where need is identified, and to perform the functions described in subdivisions (b) through (g) of Section 9774.05 at the regional level.

(d) The project contractor shall select three pilot sites for funding which, at a minimum, meet all of the following criteria:

(1) The site has a demonstrated ability to obtain private sources of funding.

(2) The site has direct experience with starting or operating an adult day services program.

(3) The site has a demonstrated ability to conduct local needs assessment and training.

(4) The site has the ability to collect data and maintain recordkeeping systems required by the project.

(e) The contractor shall determine the amount of grants, and award grants to each pilot site. The amount of funds granted shall be contingent on funds appropriated for this purpose in the annual Budget Act.

9774.2. (a) The Department of Aging shall allocate to the fund established in Section 9774.25, all state funds appropriated for the project for the purposes specified in Sections 9774.05 and 9774.15.

(b) The project shall ensure that each dollar of state funds allocated pursuant to subdivision (a) is matched by two dollars ($2) from other sources, including private corporations, the federal government, or local governments. Matching funds may include in-kind contributions to either the project or the local pilot site.

(c) Grants to the pilot sites made available through the project shall be comprised of a combination of state funds and other funds pursuant to subdivision (b).

(d) Total state funds for this pilot project shall not exceed one hundred thousand dollars ($100,000) during the first year of the project's operation.

9774.25. The contractor selected pursuant to Section 9774.1 to conduct the resource development project shall establish a separate fund to account for the receipt and disbursement of private and public funds collected for the purposes of the pilot project.

9774.3. (a) It is the intent of the Legislature that the pilot project established by this chapter shall be funded through the annual Budget Act beginning in fiscal year 1991–92, subject to the availability of funds.

(b) Beginning with the 1992–93 fiscal year and each fiscal year thereafter, the funding provided through the Budget Act in each fiscal year for the cost of administration of the Department of Aging under this chapter and the cost of grants made pursuant to Section 9774.2 shall not exceed one hundred forty-nine thousand dollars ($149,000) in the aggregate.

(c) No more than 5 percent of the funds appropriated for the pilot project shall be allocated for administrative costs of the Department of Aging.

9774.35. (a) The selected private nonprofit organization, in consultation with the Legislative Analyst and the Department of Aging, shall evaluate the California Adult Day Services Initiative Project. The evaluation shall be submitted to the appropriate policy and fiscal committees of the Legislature on or before September 1, 1994. An interim progress report shall be submitted to the appropriate policy and fiscal committees of the Legislature by March 1, 1992.

(b) The evaluation of the project shall include, but not be limited to, the following:

(1) The characteristics of the project and its data base.

(2) The effectiveness of the project in attaining its legislative goals and purposes.

(3) The appropriateness of the funding allocation mechanism.

(4) The appropriateness of amounts spent to administer the project.

(5) The extent to which the services provided by the project are duplicative of other state or local services.

(6) The extent to which there is a need to expand the project on a statewide basis.

9774.4. This chapter 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.

CHAPTER 1212

An act to amend Section 35179.5 of the Education Code, relating to education.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 35179.5 of the Education Code is amended to read:

35179.5. (a) The State Board of Education shall adopt rules and regulations establishing minimum qualifications for persons who are employed by school districts under subdivision (b) of Section 44919 to serve in a limited assignment supervising the athletic activities of pupils. The adopted rules and regulations shall include, but need not be limited to, minimum educational and work experience standards which will ensure that these employees are qualified to provide supervision and instruction of pupils participating in interscholastic athletic programs and activities.

The rules and regulations adopted pursuant to this section shall include, but shall not be limited to, a requirement that persons who are employed by school districts under subdivision (b) of Section 44919 to serve in a limited assignment supervising the athletic activities of pupils shall be qualified in the subject of substance abuse prevention, including, but not limited to, tobacco, alcohol, steroids, and human growth hormones. Competency in substance abuse prevention for this purpose shall be evidenced by completion of a college level course, workshop, or seminar that includes instruction on substance abuse prevention and the physical and psychological effects of steroids and human growth hormones.

(b) The governing board of each school district shall comply with the rules and regulations establishing minimum qualifications for persons employed in a limited assignment supervising the athletic activities of pupils adopted by the State Board of Education under subdivision (a).

(c) Each school district shall annually file a certification to the State Board of Education, on forms designated by the department for that purpose, that it is in compliance with the requirements of this section.

(d) This section shall apply to all credentialed persons and staff

providing instruction in or supervision of athletic activities.

(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 chaptered before January 1, 1994, deletes or extends that date.

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 1213

An act to add Chapter 3.5 (commencing with Section 21501) to Part 1 of Division 9 of the Public Utilities Code, relating to aviation.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) The California aerospace industry generates $30 billion in revenue to the state's economy, and employs 257,000 people. A large portion of the electronics industry in California is tied to the aerospace industry and accounts for another $58 billion in revenue, and 500,000 jobs.

(2) The United States Department of Commerce estimates that 60 percent of exports originating in California are shipped by air. In contrast, only 28 percent of exports originating in the rest of the United States are shipped by air.

(3) The current national production of general aviation airplanes is approximately 1,500 a year, less than 10 percent of the amount produced a decade ago. Although there are many reasons for the erosion of this industry, outmoded technology is the most important. However, recent technological innovations have provided a resource for application to general aviation.

(4) The average age of small airplanes in the United States is 20 years. Prices have risen not only because of the decreasing volume of production, but also because liability costs have skyrocketed, and production techniques are outmoded.

(b) The Legislature also finds that:

(1) The current trend toward reduced federal expenditures for purposes of defense can be viewed as an opportunity to explore civilian applications of defense aviation technologies for commercial purposes including, but not limited to, both ground and air transportation.

(2) It is in the public interest to apply state-of-the-art technology to ensure the safest use of the navigable airspace.

(3) The airspace over California is experiencing an increased amount of usage by both general aviation and commercial aircraft, particularly over heavily populated urban areas.

(4) The mixture of general aviation aircraft flying under Visual Flight Rules (VFR) with commercial aircraft in congested airspace over urban areas presents a safety concern to the general public.

(5) The majority of general aviation aircraft operate under Visual Flight Rules (VFR). Only a small percentage of pilots and aircraft are certified by the Federal Aviation Administration to operate under the more controlled Instrument Flight Rules (IFR).

(6) An Air Transportation Technology Center will soon be established as a component of the Institute of Transportation Studies at the University of California, Berkeley. Both the California Department of Transportation and NASA Ames Research Center will provide support for this center. Included among the priority research areas identified as a focus of the center's activities is the role of technology in improving the general aviation cockpit.

SEC. 2. Chapter 3.5 (commencing with Section 21501) is added to Part 1 of Division 9 of the Public Utilities Code, to read:

CHAPTER 3.5. INSTRUMENT FLYING

21501. It is the intent of the Legislature, in enacting this chapter, to provide a flying prototype aircraft cockpit instrument display system using state-of-the-art technology. This prototype display system would simplify the presently complex techniques required to operate general aviation aircraft under Instrument Flight Rules (IFR).

During the course of this prototype aircraft instrument display system project, the study team shall also determine potential applications of video display technology to other modes of transportation, including, but not limited to, the following:

(a) Electronic mapping and route guidance for highway travel.

(b) Route guidance for highway maintenance vehicles.

(c) Automated vehicle control for future automated highways.

21502. The department shall collaborate with the University of California, NASA Ames Research Center, and private sector entities in the development and implementation of a computerized cockpit instrument display for general aviation aircraft. The department shall provide an oversight role in the research and development work which will be conducted at the Institute of Transportation Studies at the University of California. This project shall commence

upon the availability of sufficient resources to carry out the purposes of this chapter.

21502.1. In carrying out the intent of this section, the study team shall do all of the following:

(a) Identify appropriate technology for the cockpit display and to establish a consortium of public and private sector participants to carry out the required research and development.

(b) Explore funding opportunities available through the California Competitive Technology Program or other state and federal public funding sources.

(c) Monitor and evaluate the in-flight performance of the cockpit instrument display in all weather conditions, its practical application in general aviation, acceptance by pilots, and potential impact on the air traffic control system.

(d) Develop protocol for certification by the Federal Aviation Administration.

21503. The department, in collaboration with the study team, shall report to the Governor, the Legislature, and the Federal Aviation Administration on or before July 1, 1991, concerning the status of the project conducted pursuant to this chapter, and shall also report annually thereafter on its findings and recommendations until the project is completed.

SEC. 3. Any funds necessary to carry out Chapter 3.5 (commencing with Section 21501) of Part 1 of Division 9 of the Public Utilities Code shall be obtained from public or private sources.

CHAPTER 1214

An act to add Section 6522 to the Government Code, relating to joint powers agencies.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 6522 is added to the Government Code, to read:

6522. Notwithstanding any other provision of this chapter, any state department or agency entering into a joint powers agreement with a federal, county, or city government or agency or public district in order to create a joint powers agency, shall ensure that the participation goals specified in Section 16850 and Section 10115 of the Public Contract Code and in Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code become a part of the agreement, and shall apply to contracts executed by the joint powers agency.

CHAPTER 1215

An act to add Section 88039 to the Education Code, relating to community college employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 88039 is added to the Education Code, to read:

88039. (a) Notwithstanding Sections 88026, 88027, 88029, 88030, and 88031, a community college district may establish a 9-hour-per-day, 80-hour-per-2-week work schedule, provided the establishment of the work schedule has the concurrence of the employee organization, or in the absence of an employee organization, the concurrence of the affected employee.

(b) When a 9-hour-per-day, 80-hour-per-2-week work schedule is established, it shall consist of nine work days, eight of which shall be nine-hour days, and one of which shall be an eight-hour day. The overtime rate shall be paid for all hours worked in excess of the required work day, which shall not exceed nine hours, at a rate equal to one and one-half times the regular rate of pay for the employee designated and authorized to perform the work.

(c) When a 9-hour-per-day, 80-hour-per-2-week work schedule is established, the workweek shall be defined in either of two ways, as follows:

(1) The workweek shall begin on noon Friday and will end at noon the following Friday, with the employee working nine hours each day except on alternate Thursdays when the employee will work eight hours, and on alternate Fridays when the employee will not work; or,

(2) The workweek shall begin at noon on any other day of the week and shall be defined so that no employee will be required to work more than 40 hours during any given workweek.

(d) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of the this chapter.

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

In order for certain community college districts to comply with mandated reduction of average vehicle ridership imposed on these districts to meet air pollution standards, it is necessary that this act take effect immediately.

CHAPTER 1216

An act to add Section 1170.84 to the Penal Code, relating to crimes.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 1170.84 is added to the Penal Code, to read:

1170.84. Upon conviction of any serious felony, listed in subdivision (c) of Section 1192.7, it shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170 if, during the course of the serious felony, the person engaged in the tying, binding, or confining of any victim.

CHAPTER 1217

An act to amend and renumber Sections 25299.15, 25299.16, 25299.18, 25299.19, 25299.20, 25299.21, and 25299.22 of, to add Section 25299.15 to, and to add Article 7.5 (commencing with Section 25299.82) to Chapter 6.75 of Division 20, of the Health and Safety Code, relating to petroleum, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. The Legislature finds and declares that owners and operators of underground storage tanks have been unable to obtain affordable environmental impairment liability coverage to pay for corrective action or that the coverage obtained has been beyond their financial means.

SEC. 2. Section 25299.15 of the Health and Safety Code is amended and renumbered to read:

25299.16. "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, and the regulations adopted pursuant thereto.

SEC. 3. Section 25299.15 is added to the Health and Safety Code, to read:

25299.15. "Environmental impairment liability insurance" means liability insurance against liability for bodily injury, as defined in Section 25299.12, and for property damage, as defined in Section

25299.22, arising from an occurrence, as defined in Section 25299.19.

SEC. 4. Section 25299.16 of the Health and Safety Code is amended and renumbered to read:

25299.17. "Fund" means the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50.

SEC. 5. Section 25299.18 of the Health and Safety Code is amended and renumbered to read:

25299.19. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in an unauthorized release of petroleum from an underground storage tank.

SEC. 6. Section 25299.19 of the Health and Safety Code is amended and renumbered to read:

25299.20. "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank containing petroleum. "Operator" includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

SEC. 7. Section 25299.20 of the Health and Safety Code is amended and renumbered to read:

25299.21. "Owner" means the owner of an underground storage tank containing petroleum.

"Owner" includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

SEC. 8. Section 25299.21 of the Health and Safety Code is amended and renumbered to read:

25299.22. "Petroleum" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

SEC. 9. Section 25299.22 of the Health and Safety Code is amended and renumbered to read:

25299.23. "Property damage" has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

SEC. 10. Article 7.5 (commencing with Section 25299.82) is added to Chapter 6.75 of Division 20 of the Health and Safety Code, to read:

Article 7.5. Environmental Impairment Liability Insurance Study

25299.82. (a) The Insurance Commissioner shall investigate the need for an environmental impairment liability insurance program which satisfies the financial responsibility requirements of the federal act or an approved state program, to the extent authorized by this article.

(b) An initial hearing pursuant to subdivision (a) shall be held not

later than 45 days following the effective date of the act enacting this article.

(c) After conducting the initial public hearing pursuant to subdivision (b), the Insurance Commissioner shall submit to the Governor and the Legislature, on or before July 1, 1991, an analysis of the results of the investigation and hearing, including, but not limited to, identification of insurance companies providing environmental impairment liability insurance coverage, premiums, risk/loss ratios experience, economic constraints, market development options and strategies, and any other impediments to the ability of owners and operators of underground storage tanks to meet the financial responsibility requirements of the federal act, or an approved state program.

SEC. 11. The sum of thirty thousand dollars ($30,000) is hereby appropriated from the Insurance Fund to the Insurance Commissioner to conduct the hearing required by subdivision (b) of Section 25299.79 of the Health and Safety Code.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assure expeditious cleanup of leaking underground storage tanks containing petroleum located in the state, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1218

An act to amend Sections 8282 and 9011 of the Fish and Game Code, relating to crabs.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 8282 of the Fish and Game Code is amended to read:

8282. Subject to this article and Article 1 (commencing with Section 9000) of Chapter 4, rock crab may be taken in traps in any waters of the state at any time, except in Districts 19A, 19B, and 21 and those portions of District 20 lying on the north and east sides of Santa Catalina Island north of Southeast Rock. Rock crab (Cancer antennarius), red crab (Cancer productus), or yellow crab (Cancer anthonyi), which is less than 4¼ inches, measured in a straight line across the back at the widest part, shall not be taken, possessed, bought, or sold.

SEC. 2. Section 9011 of the Fish and Game Code is amended to

read:

9011. (a) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, dungeness crab, as defined in Section 8275, may be taken with dungeness crab traps.

(2) A dungeness crab trap may have any number of openings of any size. However, every dungeness crab trap shall have at least two rigid circular openings of not less than 4¼ inches, inside diameter, on the top or side of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap.

(3) Any rock crab taken with a crab trap used pursuant to this subdivision to take dungeness crab shall be immediately returned to the waters from which it was taken. No person shall possess rock crab aboard any vessel when the vessel is being used to take dungeness crab.

(b) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab, as defined in Section 8275, may be taken with rock crab traps.

(2) A rock crab trap may have any number of openings of any size. However, a rock crab trap shall have at least two rigid circular openings of not less than 3¼ inches, inside diameter, on the top or side of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap.

(3) No person shall possess any lobster aboard a vessel while the vessel is being used pursuant to this subdivision to take rock crab. Any dungeness crab taken with a crab trap used pursuant to this subdivision to take rock crab shall be immediately returned to the waters from which it was taken. No person shall possess dungeness crab aboard any vessel when the vessel is being used to take rock crab.

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 1219

An act to amend Sections 25250.1, 25250.5, 25250.11, 25250.15, 25250.18, and 25250.19 of, to add Section 25250.12 to, and to repeal Section 25250.22 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. 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 of Title 40 of the Code of Federal Regulations.

(b) "Board" means the California Integrated 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 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. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(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. Used oil recycling facilities that are the first to claim that the used oil meets these requirements shall maintain an operating log and copies of certification forms as specified in Section 25250.19. 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 or recycling facility (whichever first claimed that the used oil met the standards and criteria) 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. 2. 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 mg/l.

(2) Cadmium is less than 1 mg/l.

(3) Total regulated halogenated solvents identified by hazardous waste number F001 or F002 in Section 261.31 of Title 40 of the Code of Federal Regulations or listed by the department as a hazardous waste are 100 ppm or less.

(c) Any person who claims that oil complies with the requirements of subdivision (b) for use of oil as a dust suppressant or weed control agent shall do all of the following:

(1) Notify the department, in writing, of that claim.

(2) Test the oil.

(3) Certify the oil as being in compliance with these requirements.

Records of tests performed shall be maintained for three years and are subject to audit and verification by the department or the board.

SEC. 3. 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) No other hazardous wastes are received at the location, unless authorized by other provisions of law.

(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. 4. Section 25250.12 is added to the Health and Safety Code, to read:

25250.12. (a) Used oil generated during maintenance operations may be transferred from its point of generation to the maintenance person's place of business, other than a residence, for the purpose of consolidation in a tank or container, without meeting the requirements of Sections 25160, 25163, and 25201, if the material is to be recycled at an authorized offsite hazardous waste facility and if all the following conditions are met:

(1) Not more than 70 gallons are transferred in the vehicle at any one time.

(2) The used oil is managed in accordance with all laws concerning storage and handling of hazardous wastes upon consolidation at the maintenance person's place of business.

(3) The used oil is deemed to be generated at the point of consolidation upon consolidation.

SEC. 5. Section 25250.15 of the Health and Safety Code is amended to read:

25250.15. (a) Any person operating a refuse removal vehicle or a curbside collection vehicle used to collect or transport used oil which has been generated as a household waste or as part of a curbside recycling program, as defined by the board, is exempt from the requirements of Section 25160 and subdivisions (a) and (e) of Section 25163 of this code and Chapter 2.5 (commencing with Section 2500) of Division 2, Division 14.1 (commencing with Section 32000), and subdivision (g) of Section 34500 of the Vehicle Code.

(b) Refuse removal and other curbside collection operations exempted under subdivision (a) are also exempt from permit requirements pursuant to Article 9 (commencing with Section 25200), if the storage location meets all applicable hazardous waste generator, container, and tank requirements, except for the generator fee requirement specified in subdivision (d).

(c) Used oil collected under the requirements of this section shall be deemed to be generated by the storage location upon receipt.

(d) Used oil collected pursuant to this section is exempt from the generator fee imposed pursuant to Section 25205.5.

SEC. 6. Section 25250.18 of the Health and Safety Code is amended to read:

25250.18. (a) Any person who transports recycled oil or oil exempted pursuant to subdivision (e) of Section 25250.1 shall maintain with each shipment a certification form, provided by the department, which contains all of the following information:

(1) The name and address of the used oil recycling facility or generator claiming the oil meets the requirements of Section 25250.1.

(2) The name and address of the facility receiving the shipment.

(3) The quantity of oil delivered.

(4) The date of shipment or delivery.

(5) A cross-reference to the records and documentation required under Section 25250.1.

(b) Certification forms required in subdivision (a) shall be maintained for three years and are subject to an audit and verification by the department or the board.

SEC. 7. Section 25250.19 of the Health and Safety Code is amended to read:

25250.19. (a) A used oil recycler shall test all recycled oil, prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or any equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in subdivision (c) of Section 25250.1. The standards for recycled oil specified in subdivision (c) of Section 25250.1 are the only concentrations allowed above the criteria adopted pursuant to Section 25141. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) A generator claiming that used oil is exempted from regulation pursuant to subdivision (e) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in subdivision (e) of Section 25250.1, prior to transportation from the generator location. Records of test performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department or the board.

SEC. 8. Section 25250.22 of the Health and Safety Code is repealed.

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 1220

An act to amend Section 1985.3 of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents, or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, chiropractor, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, or secondary school.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer

whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (h).

(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that

other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness prior to production. No witness shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

CHAPTER 1221

An act to amend Section 17749 of the Education Code, relating to school facilities.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. 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) Notwithstanding subdivision (d), relocatable structures acquired by an applicant school district up to 10 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) if the relocatable structures are to be situated on the site of a new school to be constructed under the project and all of the following conditions are met:

(1) The relocatable structures were not previously used to satisfy the 30 percent requirement set forth in subdivision (a) under any other project constructed pursuant to this chapter.

(2) The board determines that the relocatable structures are in satisfactory condition upon being moved to the new schoolsite, and are usable for classroom purposes without requiring major repair or renovation for a period of not less than 20 years subsequent to that relocation.

(3) Subsequent to moving the relocatable structures to the new schoolsite, at least 30 percent of the classroom space at the schoolsite where the structures were previously located consists of relocatable structures.

The cost of moving the relocatable structures to the new schoolsite shall be at the school district's sole expense. The cost of acquiring those relocatable structures shall not apply to fulfilling the district's

funding requirement under Section 17705.5.

(f) 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.

CHAPTER 1222

An act relating to model curriculum standards.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Anorexia nervosa (self-starvation) and bulimia (binge and purge) are eating disorders affecting 1 in 200 teenagers in the United States.

(b) One of the best methods of combating these eating disorders is through education and public awareness.

SEC. 2. The Superintendent of Public Instruction, when conducting the periodic revisions to model curriculum standards required pursuant to Section 51226, is requested to include guidelines for instruction concerning anorexia nervosa and bulimia.

CHAPTER 1223

An act to amend Section 65852.5 of the Government Code, as added by Chapter 426 of the Statutes of 1990, and to amend Section 987.65 of the Military and Veterans Code, relating to housing.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 65852.5 of the Government Code, as added by Chapter 426 of the Statutes of 1990, is amended to read:

65852.5. Notwithstanding the provisions of Section 65852.3, no city, including a charter city, county, or city and county, may impose size requirements for a roof overhang of a manufactured home subject to the provisions of Section 65852.3, unless the same size requirements also would be imposed on a conventional single-family residential dwelling constructed on the same lot. However, when there are no size requirements for roof overhangs for both

manufactured homes and conventional single-family residential dwellings, a city, including a charter city, county, city and county, may impose a roof overhang on manufactured homes not to exceed 16 inches.

SEC. 2. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, shall not exceed one hundred twenty-five thousand dollars ($125,000).

(b) The purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code shall not exceed one hundred twenty-five thousand dollars ($125,000).

(c) The purchase price of a mobilehome which is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall not exceed seventy thousand dollars ($70,000).

(d) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department is required, under Section 987.69, to add to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(e) The purchase price of a farm to the department shall not exceed two hundred thousand dollars ($200,000). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount which the department is required, under Section 987.69, to add to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

SEC. 2.5. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, shall not exceed one hundred twenty-five thousand dollars ($125,000).

(b) The purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code shall not exceed one hundred twenty-five thousand dollars ($125,000).

(c) The purchase price of a mobilehome which is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall not exceed seventy thousand dollars ($70,000).

(d) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department is required, under Section 987.69, to add to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(e) The purchase price of a farm to the department shall not exceed two hundred thousand dollars ($200,000). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount which the department is required, under Section 987.69, to add to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

(f) The assistance provided by the department to a veteran pursuant to subdivision (e) of Section 987.85 shall not exceed seventy thousand dollars ($70,000).

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 987.65 of the Military and Veterans Code proposed by both this bill and SB 2007. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 987.65 of the Military and Veterans Code, and (3) this bill is enacted after SB 2007, in which case Section 2 of this bill shall not become operative.

CHAPTER 1224

An act to amend Sections 50781, 50783, and 50784 of the Health and Safety Code, relating to mobilehomes, and making an appropriation therefor.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 50781 of the Health and Safety Code is amended to read:

50781. Unless the context otherwise requires, the following definitions given in this section shall control construction of this chapter:

(a) "Affordable" means that, where feasible, low-income residents should not pay more than 30 percent of their monthly income for housing costs.

(b) "Conversion costs" includes the cost of acquiring the

mobilehome park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

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

(d) "Fund" means the Mobilehome Park Purchase Fund created pursuant to Section 50782.

(e) "Housing costs" means the total cost of owning, occupying, and maintaining a mobilehome and a lot or space in a mobilehome park. The department's regulations shall specify the factors included in these costs and may, for the purposes of calculating affordability, establish reasonable allowances.

(f) "Individual interest in a mobilehome park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobilehome park for a period of not less than either 15 years or the life of the holder. Individual interests in a mobilehome park include, but are not limited to, the following:

(1) Ownership of a lot or space in a mobilehome park or subdivision.

(2) A membership or shares in a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a limited equity housing cooperative, as defined in Section 33007.5 of the Health and Safety Code.

(3) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobilehome park.

(g) "Low-income resident" means an individual or household who is a lower income household, as defined in Section 50079.5. However, personal assets shall not be considered in the calculation of income, except to the extent that they actually generate income.

(h) "Low-income spaces" means those spaces in a mobilehome park operated by a resident organization which are occupied by low-income residents.

(i) "Mobilehome park" means a mobilehome park, as defined in Section 18214, or a manufactured home subdivision created by the conversion to resident ownership of a mobilehome park, as defined in Section 18214, including a senior park.

(j) "Program" means the Mobilehome Park Resident Ownership Program.

(k) "Resident organization" means a group of mobilehome park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobilehome park in which they reside and converting the mobilehome park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobilehome park. The two-thirds of households in the resident organization at the time of funding need not be the same households that were residing in the park when the application for assistance was submitted to the department. A

household's membership in the resident organization when the application is made shall not be a requirement for that household to receive a loan or assistance under this chapter.

(*l*) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobilehome park which entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park, or both.

SEC. 2. Section 50783 of the Health and Safety Code is amended to read:

50783. (a) The department may make loans from the fund to resident organizations for the purpose of financing mobilehome park conversion costs, as defined in this chapter.

(b) Loans provided pursuant to this section shall be for a term of no more than three years and shall bear interest at a rate of 3 percent per annum.

(c) Loans provided pursuant to this section shall be for the minimum amount necessary to enable a resident organization to acquire and convert the mobilehome park in which its members reside. To the extent possible, the loan amount shall not exceed 50 percent of the approved conversion costs. However, the loan amount may be for up to 95 percent of the approved conversion costs attributable to the low-income households in the park when approved by the department. The department may grant this approval only where it is demonstrated that (1) the applicant has made an effort to secure additional funds from other sources and these funds are not available, and (2) the project would not be feasible as determined by the department without a waiver of the 50 percent financing limitation. The total indebtedness upon the mobilehome park may not exceed 95 percent of the value of the collateral securing the loan.

SEC. 3. Section 50784 of the Health and Safety Code is amended to read:

50784. (a) The department may make loans from the fund to low-income residents of mobilehome parks converted to resident ownership or to resident organizations which have converted or plan to convert a mobilehome park to resident ownership. The purpose of providing loans pursuant to this section is to reduce the monthly housing costs for low-income residents to an affordable level.

(b) Loans provided pursuant to this section shall be for a term of no more than 30 years and shall bear interest at a rate of 3 percent per annum.

(c) The department may establish flexible repayment terms for loans provided pursuant to this section if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund. Flexible repayment terms may include, but are not limited to, graduated payment schedules with negative

amortization.

(d) Loans provided to low-income residents pursuant to this section shall be for the minimum amount necessary to reduce the borrower's monthly housing costs to an affordable level. To the extent possible, loan amounts shall not exceed 50 percent of the acquisition costs of the individual interests in the mobilehome parks. However, the loan amounts may be for up to 95 percent of the acquisition costs of the individual interests in the mobilehome parks when approved by the department. The department may grant this approval only where it is demonstrated that (1) the low-income resident has made an effort to secure additional funding from other sources and these funds are not available, and (2) the low-income resident would be unable to purchase an individual interest without a waiver of the 50 percent financing limitation. In addition, the total indebtedness upon individual interests may not exceed 95 percent of the value of the collateral securing the loan.

(e) Loans provided to resident organizations pursuant to this section shall be for the minimum amount necessary to reduce the monthly housing costs of low-income residents to an affordable level. To the extent possible, loan amounts shall not exceed 50 percent of the conversion costs attributable to the low-income spaces. However, the loan amounts may be for up to 95 percent of the conversion costs attributable to the low-income spaces when approved by the department. The department may grant an approval of this provision only where it is demonstrated that (1) the applicant has made an effort to secure additional funds from other sources and these funds are not available, and (2) the project would not be feasible as determined by the department without a waiver of the 50 percent financing limitation. The total indebtedness upon the mobilehome park may not exceed 95 percent of the value of the collateral securing the loan. Funds provided pursuant to this section shall not be used to assist residents who are not of low-income, or to reduce monthly housing costs for low-income residents to less than 30 percent of their monthly income.

CHAPTER 1225

An act to amend Section 15204.2 of, and to repeal Sections 11023 and 11407.3 of, the Welfare and Institutions Code, relating to aid to families with dependent children, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 11023 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 11407.3 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 15204.2 of the Welfare and Institutions Code is amended to read:

15204.2. The state shall pay 83.3 percent of the nonfederal administrative costs of administering the payment of aid grants under this part, except for the Aid to Families with Dependent Children program (AFDC). The state shall pay 50 percent of the nonfederal administrative costs of administering AFDC grants subject to Sections 15204.5 and 15204.6, but not including activities related to the collection of support from noncustodial parents and the determination of paternity in the case of a child born out of wedlock. In the event that the federal government does not provide funding for the non-AFDC collection of child support from noncustodial parents and the non-AFDC determination of paternity in the case of a child born out of wedlock, the state shall pay 75 percent of the non-AFDC administrative costs. The state shall pay 50 percent of the nonfederal share of the cost of eligibility and nonservice staff development pursuant to the regulations of the department.

SEC. 4. Notwithstanding Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code, any amount of the unexpended balance in the Restitution Fund, to be determined by the Department of Finance for the 1990–91 fiscal year, shall be transferred from the Restitution Fund to Item 5180-151-001(a)(1) of the Budget Act of 1990 to ensure that child welfare caseloads are partially funded in the 1990–91 fiscal year, so that abused and neglected children brought to the attention of county departments of social services can receive appropriate protective services.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that children can be appropriately protected from abuse and neglect during the 1990–91 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1226

An act to amend Sections 6731, 6731.1, and 8726 of the Business and Professions Code, relating to computer mapping.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 6731 of the Business and Professions Code is amended to read:

6731. Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges:

(a) The economics of, the use and design of, materials of construction and the determination of their physical qualities.

(b) The supervision of the construction of engineering structures.

(c) The investigation of the laws, phenomena and forces of nature.

(d) Appraisals or valuations.

(e) The preparation or submission of designs, plans and specifications and engineering reports.

(f) Coordination of the work of professional, technical, or special consultants.

(g) Creation, preparation, or modification of electronic or computerized data in the performance of the activities described in subdivisions (a) through (f).

Civil engineering also includes city and regional planning insofar as any of the above features are concerned therein.

Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3.

SEC. 1.5. Section 6731.1 of the Business and Professions Code is amended to read:

6731.1. Civil engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of trigonometry or photogrammetry.

(c) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a)

and (b).

SEC. 2. Section 8726 of the Business and Professions Code is amended to read:

8726. A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of trigonometry or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any such monument or reference point.

(f) Geodetic or cadastral surveying.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordination of the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(*l*) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared

for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k) and (*l*).

Any department or agency of the state or any city, county, or city and county which has an unregistered person in responsible charge of land surveying work on the effective date of the amendments made to this section at the 1984–85 Regular Session of the Legislature shall be exempt from the requirement that the person be licensed as a land surveyor until such time as the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

SEC. 3. The amendments made to Sections 6731, 6731.1 and 8726 by this act are intended to recognize a media change from a paper-based system to a computer-based system and are not intended to expand the regulated scope of practice of engineering or land surveying services.

The amendments to Sections 6731, 6731.1, and 8726 of the Business and Professions Code contained in this act are not intended to restrict the activities of an entity possessing a license or certificate under Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1227

An act to amend Sections 1250, 1250.1, 1265.7, 1266, 1267.9, 1267.13, and 1418 of, and to add Chapter 8.6 (commencing with Section 1760) to Division 2 of, the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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, a diagnosis of a life-threatening illness, or both. 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. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years 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, persons who have been diagnosed with a life-threatening illness, or both, 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. 1.5. 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, a diagnosis of a life-threatening illness, or both. 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. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years 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, persons who have been diagnosed with a life-threatening illness, or both, 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.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

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) Pediatric day health and respite care facility, as defined in Section 1760.2.

(*l*) 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, who have a diagnosis of a life-threatening illness, who are catastrophically and severely disabled, or any combination of those persons, shall ensure that residents of these facilities receive supportive health services, based on individual resident acuity levels in the most normal, least restrictive physical environment for individual resident needs.

(4) Regulations adopted pursuant to this subdivision 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, 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.

(g) The annual fee for a pediatric day health and respite care facility, as defined in Section 1760.2, 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 or clients	$ 800
4–6 beds or clients	$1,000
7–10 beds or clients	$1,200
11–15 beds or clients	$1,500
16 or more beds or clients	$1,700 plus $50 for each additional bed or client over 16 beds or clients

Commencing July 1, 1993, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

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, congregate living health facilities, or pediatric day health and respite care facilities, as defined in Section 1760.2, 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, a congregate living health facility, or a pediatric day health and respite care 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, a congregate living health facility, or a pediatric day health and respite care 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, residential care facilities, as defined in Section 1502, or pediatric day health and respite care facilities 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, diagnosed with a life-threatening illness, 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, a congregate living health facility, or a pediatric day health and respite care 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, a congregate living health facility, or a pediatric day health and respite care 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, a congregate living health facility license, or a pediatric day health and respite care 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, a congregate living

health facility, or a pediatric day health and respite care 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, congregate living health facilities, or pediatric day health and respite care 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, subdivisions (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.

(p) The interim regulations prescribed by this section shall become inoperative upon the filing of the permanent regulations with the Secretary of State, or on July 1, 1993, whichever occurs first.

SEC. 7. Section 1418 of the Health and Safety Code is amended to read:

1418. As used in this chapter:

(a) "Long-term health care facility" means any facility licensed pursuant to Chapter 2 (commencing with Section 1250) which is any of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(3) Intermediate care facility/developmentally disabled.

(4) Intermediate care facility/developmentally disabled habilitative.

(5) Intermediate care facility/developmentally disabled—nursing.

(6) Congregate living health facility.

"Long-term health care facility" also includes a pediatric day health and respite care facility licensed pursuant to Chapter 8.6 (commencing with Section 1760).

"Long-term health care facility" does not include a general acute care hospital or an acute psychiatric hospital, except for that distinct part of the hospital which provides skilled nursing facility, intermediate care facility, or pediatric day health and respite care facility services.

(b) "Licensee" means the holder of a license issued under Chapter 2 (commencing with Section 1250) or Chapter 8.6

(commencing with Section 1760) for a long-term health care facility.

SEC. 8. Chapter 8.6 (commencing with Section 1760) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 8.6. PEDIATRIC DAY HEALTH AND RESPITE CARE FACILITIES

1760. In enacting this chapter, it is the intent of the Legislature to create, within the state department, a program for licensing pediatric day health and respite care facilities to serve the needs of medically fragile and terminally ill children and their families.

1760.2. As used in this chapter, the following definitions shall apply:

(a) "Pediatric day health and respite care facility" means a facility which provides an organized program of therapeutic social and day health activities and services and limited 24-hour inpatient respite care to medically fragile children 21 years of age or younger, including terminally ill and technology dependent children.

(b) "Medically fragile" means having an acute or chronic health problem which requires therapeutic intervention and skilled nursing care during all or part of the day. Medically fragile problems include, but are not limited to, HIV disease, severe lung disease requiring oxygen, severe lung disease requiring ventilator or tracheostomy care, complicated spina bifida, heart disease, malignancy, asthmatic exacerbations, cystic fibrosis exacerbations, neuromuscular disease, encephalopathies, and seizure disorders.

(c) "Technology-dependent child" means a person from birth through 21 years of age who has a chronic disability, requires the routine use of a specific medical device to compensate for the loss of use of a life sustaining body function, and requires daily, ongoing care or monitoring by trained personnel.

(d) "Respite care" means day and 24-hour relief for the parent or guardian and care for the child. Twenty-four hour inpatient respite care includes, but is not limited to, 24-hour nursing care, meals, socialization, and developmentally appropriate activities. As used in this chapter, "24-hour inpatient respite care" is limited to no more than 30 intermittent or continuous days per patient per calendar year.

(e) "Comprehensive case management" means locating, coordinating, and monitoring services for the eligible client population and includes all of the following:

(1) Screening of client referrals to identify those persons who can benefit from the available services.

(2) Comprehensive client assessment to determine the services needed.

(3) Coordinating the development of an interdisciplinary comprehensive care plan.

(4) Determining individual case cost effectiveness and available sources of funding.

(5) Identifying and maximizing informal sources of care.

(6) Ongoing monitoring of service delivery to determine the optimum type, amount, and duration of services provided.

(f) "License" means a basic permit to operate a pediatric day health and respite care facility. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), "license" means a special permit authorizing the health facility to provide pediatric day health and respite care services as a separate program in a distinct part of the facility.

(g) "State department" means the State Department of Health Services.

1760.4. (a) The state department shall develop and adopt regulations for the licensure of, and shall license, pediatric day health and respite care facilities. The regulations shall include minimum standards for the following:

(1) Adequacy, safety, and sanitation of the physical plant and equipment.

(2) Staffing with duly qualified personnel.

(3) Training of the staff.

(4) Providing the services offered.

These regulations shall be filed with the Secretary of State no later than July 1, 1993.

(b) The state department shall establish within the state department an advisory committee of experts to assist in the development of the regulations required pursuant to this section. A representative of the state department shall act as chairperson of the committee. The members of the committee shall serve without compensation, but shall be reimbursed by the state department for all necessary expenses incurred in the actual performance of their duties. To the extent sufficient funds have been appropriated in the Budget Act, the state department may provide staff support to the committee as the state department deems is necessary for the conduct of the committee's business. The committee shall meet at the state director's pleasure until the time that the proposed regulations are presented for adoption at the public hearing.

(c) Pending adoption of the regulations pursuant to subdivision (b), an entity may be licensed as a pediatric day health and respite care facility if it meets interim regulations administered by the state department for congregate living health facilities pursuant to Section 1267.13.

1760.6. (a) A pediatric day health and respite care facility shall provide all of the following services:

(1) Medical.

(2) Nursing.

(3) Pharmacy.

(4) Nutrition.

(5) Socialization.

(6) Developmentally appropriate activities.

(b) Services which may be provided by a pediatric day health and

respite care facility include, but are not limited to, any of the following:

(1) Physical therapy.

(2) Developmental services.

(3) Occupational and speech therapy.

(4) Educational and psychological services.

(5) Respite care.

(6) Instruction for parents or guardians.

(7) Comprehensive case management, if not otherwise available for the client.

1760.8. (a) A pediatric day health and respite care facility may establish admission criteria based upon the compatibility of the developmental needs of the persons served and the facility's ability to meet those needs. All admission criteria established by the facility shall be approved by the state department.

(b) A child accepted for care in a pediatric day health and respite care facility shall satisfy all of the following criteria:

(1) Be medically stable, as determined by the child's attending physician and surgeon.

(2) Be under the care of a physician and surgeon who approves the plan of care.

(3) Have current immunization records unless medically contraindicated as stated by the child's attending physician and surgeon at the time of admission and pose no significant risk of infection to others in the facility.

(4) Have the consent of the parent or legal guardian for the admission.

1761. Pediatric day health and respite care facilities shall be separately licensed.

1761.2. (a) Pediatric day health and respite care facilities shall meet the same fire safety standards adopted by the State Fire Marshal that apply to community care facilities, as defined in Section 1502, of similar size and with clients of similar age and ambulatory status. No other state or local requirements relating to fire safety shall apply to these facilities and the requirements in this section shall be uniformly enforced by state and local fire authorities.

(b) Pediatric day health and respite care facilities shall meet the same seismic safety standards that apply to community care facilities, as defined in Section 1502, of similar size and with clients of similar age and ambulatory status. No additional state or local requirements relating to seismic safety shall apply to these facilities.

1761.4. A pediatric day health and respite care facility of six beds or less shall be considered a residential use of property for purposes of any zoning ordinance or law related to the residential use of property. This section does not prohibit any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a pediatric day health and respite care facility as long as those restrictions are identical to those applied to single-family residences.

1761.6. A pediatric day health and respite care facility shall conspicuously post the license, or a true copy thereof, in a location accessible to public view.

1761.8. A pediatric day health and respite care facility shall not be subject to architectural plan review or field inspection by the Office of Statewide Health Planning and Development. However, as part of the application for licensure, an applicant shall submit evidence of compliance with local building code requirements. In addition, the physical environment shall be adequate to provide the level of care and service required by the clients of the facility as determined by the state department.

SEC. 8.5. Section 1.5 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and SB 1524. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after SB 1524, in which case Section 1250 of the Health and Safety Code, as amended by SB 1524, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 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.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide care to persons with life-threatening illnesses in a homelike setting and to provide pediatric day health and respite care to medically fragile children and their families at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1228

An act to repeal, add, and repeal Section 19607.5 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 19607.5 of the Business and Professions Code, as added by Chapter 131 of the Statutes of 1990, is repealed.

SEC. 2. Section 19607.5 is added to the Business and Professions Code, to read:

19607.5. (a) Notwithstanding any other provision of law, when both a fair and a thoroughbred association are licensed by the board to conduct live racing meetings within the northern zone on at least 10 days during the same calendar period, signals of both racing programs shall be accepted at each live racing meeting within the northern zone and at all satellite wagering facilities eligible to receive these programs.

(b) Notwithstanding any other provision of law, in order to ensure that fairs which previously had an exclusive right to send their signals to satellite wagering facilities in the northern zone during periods of overlap do not lose commission revenues from satellite wagering, each fair that conducts its meeting during the period described in subdivision (a) shall receive the following satellite wagering commissions:

(1) With respect to the 2nd District Agricultural Association in Stockton, the commissions payable to the fair from satellite wagering during the period described in subdivision (a) shall be the greater of any of the following:

(A) The actual commission earned by the fair from satellite wagering on its live races during that period.

(B) Fifty percent of the total combined satellite wagering commissions payable to the thoroughbred association and the fair during that period.

(C) One hundred ten percent of the satellite wagering commissions paid to the fair during its live racing meeting in 1990.

If in 1991 or 1992, the satellite wagering commissions received by the 2nd District Agricultural Association are less than the greater of the amounts specified in subparagraph (B) or (C), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the applicable amount from subparagraph (B) or (C). No additional satellite wagering

commission shall be paid to the fair by an association unless the fair conducts at least 10 days of live racing during the period described in subdivision (a).

(2) With respect to the California Exposition and State Fair in Sacramento, the commissions payable to the fair from satellite wagering during the period described in subdivision (a) shall be the greater of either of the following:

(A) The actual commission earned by the fair from satellite wagering on its live races during that period.

(B) Sixty percent of the total combined satellite wagering commissions payable to the thoroughbred association and the fair during that period.

If in 1991 or 1992, the satellite wagering commissions received by the California Exposition and State Fair are less than the amount described in (B), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the amount described in (B). No additional satellite wagering commission shall be paid to the fair by an association unless the fair conducts at least 10 days of live racing during the period described in subdivision (a).

(c) During any periods described in subdivision (a), including periods of overlap for fairs not specified in subdivision (b), the thoroughbred association shall deduct the same percentage from the total amount wagered in its daily conventional and exotic parimutual pools as the percentage deducted by the fair meeting. The amounts deducted shall be distributed as otherwise provided in this article, with the following exceptions:

(1) If the percentages deducted from the conventional and exotic parimutuel pools of the thoroughbred association under this subdivision exceed the percentages deducted from the association's pools during periods other than those described under subdivision (a), the amount deducted which is equivalent to the difference between those percentages shall be distributed by the thoroughbred association equally between commissions and purses.

(2) If a thoroughbred association and the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento both conduct live racing meetings during any period described in subdivision (a), the total amount deducted shall be distributed by both the association and fair in the percentages specified for fair meetings in subdivision (b) of Section 19605.7.

Nothing in this subdivision requires any portion of the additional deduction to be distributed pursuant to subdivision (c) of Section 19614.

(d) Notwithstanding any other provision of law, an association and fair that conduct their meeting pursuant to subdivision (b) shall combine the operating expenses incurred at satellite wagering

facilities during the period described in subdivision (a). For purposes of this subdivision only, the combined satellite wagering operating expenses of the association and the fair during the period described in subdivision (a) shall not exceed the actual expenses, or 6 percent of the combined parimutuel pool at satellite wagering facilities, whichever is less.

(e) Notwithstanding Section 19606.4, it is the intent of the Legislature that during the period described in subdivision (a) the funds allocated pursuant to Section 19606.3 shall be used to bring purses at the fair racing meetings conducted by the 2nd District Agricultural Association and the California Exposition and State Fair to a level of at least 100 percent of purses for similar classes of horses at the private association which is conducting the simultaneous program.

(f) 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. 3. Section 19607.5 is added to the Business and Professions Code, to read:

19607.5. (a) Notwithstanding any other provision of law, if there is an overlap in the northern zone between a racing fair, other than the Fresno fair or Ferndale fair, and any other association that races in the daytime, the racing fair has the exclusive right to send its signal to the satellite wagering facilities in the northern zone if the board determines that it is operationally possible for the racing fair to send its signal. However, any association that is not a fair that races in the northern zone may send its signal to a satellite wagering facility located at another association that is not a fair in the northern zone.

(b) This section shall become operative January 1, 1993.

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:

Since the bill would authorize the satellite wagering facilities in northern California to accept both thoroughbred and fair racing programs during periods of overlap, it is expected to substantially increase the total amount wagered. In order for the state to realize additional parimutuel revenues from the new wagering as soon as possible, it is necessary that this bill take immediate effect.

CHAPTER 1229

An act to add Section 426.10 to the Health and Safety Code, relating to detoxification of new buildings.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 426.10 is added to the Health and Safety Code, to read:

426.10. (a) The state department through its Indoor Air Quality Program shall develop nonbinding guidelines for the reduction of exposure to volatile organic compounds (VOC) from construction materials in newly constructed or remodeled office buildings. At a minimum, the state department shall consider all of the following:

(1) The type of building to which the guidelines shall apply.

(2) The methodology for identifying indoor sources of VOC.

(3) The bake-out procedures prior to occupancy for newly constructed buildings.

(4) The procedures for VOC reduction during and after major remodeling of occupied buildings.

(5) The need to establish mandatory regulations rather than nonbinding guidelines for the procedures to reduce VOC exposure in newly constructed buildings and during the remodeling of buildings and, in addition, the need for regulation regarding the occupancy of a newly constructed building or a building undergoing remodeling where VOC reduction is to be a consideration.

(6) The need to establish an ad hoc group of building construction material manufacturers, builders, building owners and managers, organized labor, sheetmetal contractors, plumbing contractors, mechanical engineers, architects, and building inspectors to advise the state department on procedures and costs related to implementing the proposed guidelines.

(b) The state department shall develop and submit the nonbinding guidelines to the Legislature, and file copies with the Department of General Services and the State Building Standards Commission, by January 1, 1992.

(c) The guidelines developed by the state department pursuant to this section shall be nonbinding and voluntary, and shall therefore, be exempt from the procedures for adoption of regulations, including the review and approval by the Office of Administrative Law, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code.

CHAPTER 1230

An act to amend Section 15325 of, and to add Chapter 9 (commencing with Section 15399.30) to Part 6.7 of Division 3 of Title 2, of the Government Code, relating to technology development, deployment, and commerce.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

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

(a) California currently faces pervasive escalation of global economic competition which results in the urgent need for increased capabilities in the following:

(1) Technology innovation.

(2) Human resources development.

(3) Capital resources development.

(4) Supportive governmental infrastructure policies.

(5) Technology transfer.

(6) Technology transition (e.g., defense build-down).

(7) Technology deployment or technical assistance.

(8) Global market access.

(b) The need for these increased capabilities manifests itself statewide, particularly in distressed rural and urban sectors. Rural sectors of California generally suffer from a lack of economic diversity and lack of access to global capital and product markets. Select urban manufacturing sectors face the long-term effects of the migration of production capital abroad attracted by cheaper, yet technologically competitive employees, lower land costs, and target market proximity. Declining defense manufacturing expenditures statewide may exacerbate this condition.

(c) In contrast, California possesses significant globally distinctive competencies in science and technology facilitating the full range of low and high technology commercial applications. These distinctive competencies manifest themselves in this state's institutions of higher education; in its industry leadership in manufacturing, agricultural, and service sectors; and in its highly trained research, engineering, and other scientific, technological, and entrepreneurial human resources.

(d) California's competitiveness in international trade and in the domestic competition among states to promote economic growth and to foster and attract new enterprises will increasingly depend on the state's ability to do the following:

(1) Support technology innovation in our public and independent universities, as well as in the science and technology-based private sector.

(2) Educate both a greater number and a higher quality science and technology competent workforce.

(3) Encourage and facilitate capital investment in advanced technology-related industries.

(4) Provide a measured government regulatory balance between environmental quality preservation and economic development initiatives.

(5) Nurture the development of university and federal government laboratories technology transfer activities with the private sector.

(6) Provide private sector access opportunities for technical assistance, including collaboration among all educational segments to develop integrated technical assistance and training delivery innovations.

(7) Establish global market access for the benefit of California enterprises and employees.

(e) New growth markets for California products reflecting all levels of technology are now emerging throughout the world, presenting opportunities for California enterprises to enter these emerging markets. Enhanced export capabilities can result in new consumer and industrial markets throughout the world for California products. This opportunity reflects market liberalization in Japan, the consolidation of the European Economic Community, the economic maturation of the newly industrialized countries of the Pacific Rim, and the democratization of, and economic transformations in, Eastern Europe and other developing nations.

SEC. 2. It is the intent of the Legislature to develop and implement a comprehensive, coherent program which fosters all of the following:

(a) Promotion of technology innovation in order to increase the state's commitment to the development of new scientific and engineering knowledge in the public and independent universities, as well as in private sector science and technology-based industries.

(b) Promotion of technology transfer from this state's public university systems, its independent universities and colleges, its community colleges, and its national laboratories to California's private sector innovators, including manufacturing sector employers and employees in distressed urban and rural sectors.

(c) Assistance in technology transition in order to provide opportunities and considerations in aiding high technology industries to modify their product or services emphasis from national security to commercially oriented programs.

(d) Providing a coordinated program of technical assistance services in order to facilitate the use of established technologies to energize the productivity and competitiveness of private sector organizations, particularly those located in economically distressed rural and urban areas.

(e) Promotion of rapid global commercialization of California products and technologies.

(f) Development of immediate and long-term policy strategies with attention to stimulating California's economy towards meeting economic adjustment needs and fulfilling California's yet untapped potential in the six areas of ecomonic development, as follows:

(1) Entrepreneurship: to enhance California's global competitiveness by stimulating and incubating entrepreneurial initiatives in small businesses, higher education, and established industries.

(2) Education: to build on the benefits flowing from California's leadership in university research in order to stimulate economic growth opportunities; to cultivate and attain global standards of excellence throughout the entire public education system; and to ensure access by all the residents of California to technology-based information and educational networks of the future in the pursuit of excellence.

(3) Employment: to create new jobs and to retain the workforce by promoting adoption of globally competitive process technologies and manufacturing management innovations by and for the residents of California; and to adapt defense industries and competitive technologies to civilian applications in order to preserve existing managerial and labor talent and to stimulate new company formation and create new jobs.

(4) Export development: to open new international markets for California products establishing the foundation for future export generation through regional product-market development; to stimulate innovative, differentiated new product development addressing emerging high value-added international consumer and industrial markets; and to provide support to small- and medium-sized businesses in accessing international markets.

(5) Environment: to protect and enhance the rights of the residents of California and our prosperity to enjoy the safety and beauty of the state's natural assets; to reward private sector technology and program initiatives in environmental remediation; to stimulate the development of environmentally sensitive product and technology innovations; and to more effectively regulate the propagation of environmentally injurious technologies and product application.

(6) Equal access to information: to ensure all residents equal access to the global information explosion.

SEC. 3. Section 15325 of the Government Code is amended to read:

15325. The work of the department shall be divided into at least the following offices:

(a) The Office of Economic Research.

(b) The Office of Local Development.

(c) The Office of Business Development.

(d) The Office of Tourism.

(e) The Office of Small Business.

(f) The California Film Commission.

(g) The Office of Marketing and Communications.
(h) The Office of Competitive Technology.
(i) The Office of Foreign Investment.

SEC. 4. Chapter 9 (commencing with Section 15399.30) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 9. STRATEGIC PLAN AND PILOT PROGRAMS TECHNOLOGY DEVELOPMENT AND DEPLOYMENT

15399.30. (a) The Legislature hereby requests the California Council on Science and Technology, in consultation with the Department of Commerce and the Employment Training Panel, to appoint a select panel of at least 13 distinguished members from the private sector, public and independent universities and colleges, including community colleges, and local, regional, state, and federal governments to develop a plan referred to as "Toward the 21st Century—A California Strategic Plan for Technology Development and Deployment" by no later than March 15, 1991. The panel members selected shall reflect the ethnic, gender, and geographic diversity of the state.

(b) The select panel shall be assisted by a full-time staff director, who shall report to the select panel, appointed by the council in consultation with the Department of Commerce and the Employment Training Panel. The staff director, subject to the approval of the panel, may utilize appropriate technical and clerical support personnel and technology and economic development consultants. The selection of the consultants shall be conducted through a publicly announced competitive bidding process.

(c) The staff director shall work with the executive director of the council in preparation of the plan.

(d) Funding for select panel costs which include, but are not limited to, expenses, consultants' fees, and operating costs may be provided by the Employment Training Panel in an agreement with the council. The entire funding for the staff personnel shall be provided by private donations or by public nonstate grants. Private donations or public nonstate grants shall comprise 50 percent of the total funding for all costs associated with this section.

15399.31. In developing the plan, the council shall request the panel to work with the following state department offices, programs, councils, and institutions upon the concurrence of the authority responsible for the respective entity:

(a) California State World Trade Commission.
(b) California Council on Science and Technology.
(c) California State Chamber of Commerce.
(d) California Business Roundtable.
(e) Secretary of the Resources Agency.
(f) Secretary of Environmental Affairs.
(g) Department of Commerce:
(1) Office of Business Development.

(2) Office of Competitive Technology.
(3) Office of Economic Research.
(4) Office of Foreign Investment.
(5) Office of Local Development.
(6) Office of Small Business.
(h) The Employment Development Department.
(i) The University of California.
(j) California State University.
(k) California Community Colleges Economic Development Network.
(*l*) California independent universities and colleges.
(m) Superintendent of Public Instruction.
(n) President pro Tempore of the Senate.
(o) Speaker of the Assembly.
(p) Office of the Governor.
(q) California Postsecondary Education Commission.
(r) Department of Transportation.
(s) California Planning Commission on Educational Technology.

15399.32. The plan shall provide a comprehensive strategic framework for purposes of fulfilling the legislative intent stated in Section 2 of the act adding this chapter. Toward these ends, the plan shall do the following:

(a) Conduct a comprehensive strategic audit of existing California-based public and private resources and programs pertaining to technology development and deployment, including, but not limited to, technology training.

(b) Identify key statewide technology needs and opportunities.

(c) Suggest statewide policies, goals, and priorities with accompanying implementation strategies relating to the full range of the technology cycle, including, but not limited to, technology innovation, technology transfer, technology transition (e.g., defense build-down), technology deployment (e.g., existing technologies, technical training, and technical assistance), and global market access taking into consideration the Legislature's findings, declarations, and intentions stated in Sections 1 and 2 of the act adding this chapter.

(d) Consider a statewide technology extension program, including, but not limited to, centers of excellence, as a central component for a technology deployment (including technology training) strategy.

(e) Make recommendations for fiscal, legislative, executive, educational, or private sector resources and programs and any other recommendations to implement the plan that may be appropriate for facilitating the legislative intent of this chapter.

(f) Consider and provide value beyond the findings of the California Economic Development Corporation's "Vision 2010" project, the Stanford Research Institute's report to the Senate, and of the California Engineering Foundation's "California Master Plan for Economic Development and Competitiveness" report in close

consultation with the respective organizations that authored these reports.

15399.33. In preparing the plan, the council select panel shall make biannual interim and final reports of its findings to the Employment Training Panel to assist the Employment Training Panel in carrying out its responsibilities under subdivisions (a) and (b) of Section 10205 of the Unemployment Insurance Code. The biannual interim reports shall also be provided to the office of the Governor, the Department of Commerce, the California Economic Development Corporation, the Assembly and Senate Committees on Local Government, the Senate Select Committee on the Pacific Rim, the Assembly Committee of Economic Development and New Technologies, the Assembly Office of Research, the Senate Office of Research, and the Joint Legislative Committee on Science and Technology.

15399.34. In the course of drafting the plan and for inclusion in its biannual interim and final reports, the panel shall also identify or develop technology transition and technology deployment models appropriate for California which, among other things, apply to technology extension programs for the 1992–93 fiscal year which are consistent with the intent of this legislation and reflect appropriate collaboration among all segments of education.

15399.35. (a) For purposes of funding pilot programs and providing timely input to the select panel pursuant to Section 15399.34 regarding existing and new technology deployment proposals and programs statewide, it is the intent of the Legislature that the Department of Commerce and the Employment Training Panel jointly plan and issue a request for proposals for potential funding of technology deployment pilot programs which demonstrate the feasibility of technology extension programs. The request for proposals should reflect a preference for the following attributes:

(1) Effective collaboration among the California Community Colleges Economic Development Network, California State University, the University of California, or independent colleges and universities.

(2) Effective leveraging of existing public resources and innovation of existing delivery systems, including, but not limited to, technical assistance and training networks.

(3) International linkage development for purposes of international product and capital market access development in part for the benefit of small- and medium-sized enterprises.

(b) The successful candidate proposals shall be consistent with the intent of this chapter. The council's select panel shall review the progress of the successful projects, make itself available for ongoing consultation, and may integrate results from the project in the plan.

15399.36. Funding for this chapter may be made available from the Employment Training Panel established pursuant to Section 10202 of the Unemployment Insurance Code, subject to the

concurrence of the Employment Training Panel and, in the case of Section 15399.30, subject to the receipt of matching funds from the private sector.

15399.37. The council shall submit "Toward the 21st Century—A California Strategic Plan For Technology Development and Deployment" along with any comments regarding the plan to the Governor and the Legislature by December 31, 1992.

CHAPTER 1231

An act to amend Sections 48915.1 and 48918 of the Education Code, relating to pupils.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 48915.1 of the Education Code is amended to read:

48915.1. (a) If the governing board of a school district, receives a request from an individual, who has been expelled from another school district for an act described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted according to the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for explusion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.

(b) If a pupil has been expelled from his or her previous school for any of the offenses listed in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915, the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a).

(c) The governing board of a school district may make a determination to deny enrollment to an individual who has been expelled from another school district for any act described in

paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing, that the individual poses a potential danger to either the pupils or employees of the school district.

(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

(1) Deny enrollment.

(2) Permit enrollment.

(3) Permit conditional enrollment in a regular school program or another educational program.

(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for any act described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts.

SEC. 2. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays of the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall require that the pupil shall be entitled to at least one postponement for a period of not more than 30 calendar days of an expulsion hearing. Thereafter, any additional postponement may be granted at the discretion of the governing board.

A decision of the governing board whether to expel a pupil shall be made within 10 schooldays following the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall make its decision about a pupil's expulsion within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or

the superintendent, unless the pupil requests in writing that the decision be postponed.

In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include: the date and place of the hearing; a statement of the specific facts and charges upon which the proposed expulsion is based; a copy of the disciplinary rules of the district which relate to the alleged violation; a notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1; and notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses.

(c) Notwithstanding the provisions of Section 54593 of the Government Code and Section 35145 of this code, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining if the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil shall also be allowed to attend the closed deliberations.

(d) In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207 of this code, for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom shall be members of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance

with all of the procedures established under this section.

(e) Within three schooldays following the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil shall be immediately reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations which are edited in such a manner as to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(i) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by notice of the right to appeal the expulsion to the county board of education and of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1, to inform the new school district of an enrolling pupil's expulsion, upon enrollment in a new school district.

(j) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 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 1232

An act to add Sections 36.5 and 222.5 to the Code of Civil Procedure, to amend Sections 69907, 73642, 73952, 74342, and 74742 of, to add Sections 69908, 74145, and 75103.5 to, and to repeal and add Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of, the Government Code, relating to courts.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 36.5 is added to the Code of Civil Procedure, to read:

36.5. An affidavit submitted in support of a motion for preference

under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party. The affidavit is not admissible for any purpose other than a motion for preference under subdivision (a) of Section 36.

SEC. 1.5. Section 222.5 is added to the Code of Civil Procedure, to read:

222.5. To select a fair and impartial jury in civil jury trials, the trial judge shall examine the prospective jurors. Upon completion of the judge's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any of the prospective jurors in order to enable counsel to intelligently exercise both peremptory challenges and challenges for cause. During any examination conducted by counsel for the parties, the trial judge should permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case. The fact that a topic has been included in the judge's examination should not preclude additional nonrepetitive or nonduplicative questioning in the same area by counsel.

The scope of the examination conducted by counsel shall be within reasonable limits prescribed by the trial judge in the judge's sound discretion. In exercising his or her sound discretion as to the form and subject matter of voir dire questions, the trial judge should consider, among other criteria, any unique or complex elements, legal or factual, in the case and the individual responses or conduct of jurors which may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case. Specific unreasonable or arbitrary time limits shall not be imposed.

The trial judge should permit counsel to conduct voir dire examination without requiring prior submission of the questions unless a particular counsel engages in improper questioning. For purposes of this section, an "improper question" is any question which, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law. A court should not arbitrarily or unreasonably refuse to submit reasonable written questionnaires, the contents of which are determined by the court in its sound discretion, when requested by counsel.

In civil cases, the court may, upon stipulation by counsel for all the parties appearing in the action, permit counsel to examine the prospective jurors outside a judge's presence.

SEC. 2. Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government Code is repealed.

SEC. 3. Article 5 (commencing with Section 68600) is added to Chapter 2 of Title 8 of the Government Code, to read:

Article 5. The Trial Court Delay Reduction Act

68600. This article shall be known and may be cited as the Trial Court Delay Reduction Act.

68603. (a) The Judicial Council shall adopt standards of timely disposition for the processing and disposition of civil and criminal actions. The standards shall be guidelines by which the progress of litigation in the superior court of every county may be measured. In establishing these standards, the Judicial Council shall be guided by the principles that litigation, from commencement to resolution, should require only that time reasonably necessary for pleadings, discovery, preparation, and court events, and that any additional elapsed time is delay and should be eliminated.

(b) The Judicial Council may adopt the standards of timely disposition adopted by the National Conference of State Trial Judges and the American Bar Association or may adopt different standards, but in the latter event shall specify reasons for approval of any standard which permits greater elapsed time for the resolution of litigation than that provided in the standards of the National Conference of State Trial Judges.

(c) The Judicial Council shall adopt rules effective July 1, 1991, to be used by all delay reduction courts, establishing a case differentiation classification system based on the relative complexity of cases. The rules shall provide longer periods for the timely disposition of more complex cases. The rules may provide a presumption that all cases, when filed, shall be classified in the least complex category.

68604. The Judicial Council shall collect and maintain statistics, and shall publish them at least on a yearly basis, regarding the compliance of the superior court of each county and of each branch court with the standards of timely disposition adopted pursuant to Section 68603. In collecting and publishing these statistics, the Judicial Council shall measure the time required for the resolution of civil cases from the filing of the first document invoking court jurisdiction, and for the resolution of criminal cases from the date of arrest, including a separate measurement in felony cases from the first appearance in superior court. The Judicial Council shall report its findings and recommendations to the Legislature in a biennial Report on the State of California's Civil and Criminal Justice Systems.

The Judicial Council shall conduct a two-year study on the stipulated continuance authorized by subdivision (c) of Section 68616, and shall report its findings and recommendations thereon to the Legislature within six months thereafter.

68605. The Judicial Council shall designate the four superior courts with 18 or more judicial positions which, as of June 30, 1986, had the highest ratio per judicial position of at-issue civil cases pending more than one year, and the five superior courts with more than eight judicial positions, not otherwise designated, with the highest such ratio. In each such court, an exemplary delay reduction

program shall be established. The superior court of any other county, at the option of the presiding judge, may elect to establish an exemplary delay reduction program, and the Judicial Council may designate additional superior courts for participation in an exemplary delay reduction program.

This section shall cease to be operative on July 1, 1992.

68605.5. On and after July 1, 1992, this article shall apply to all actions and proceedings in the superior court in each county, except actions and proceedings subject to subdivision (a) of Section 68608 or subdivision (b) of Section 68609.

68606. In each of the counties in which an exemplary delay reduction program is established, the presiding judge shall, (a) select a sufficient number of judges for the program that will provide, consistent with the size of the court, an adequate basis for determining the effectiveness of the methods for reducing delay specified in this article; and (b) identify the particular judges who will participate in the program. However, a minimum of four judges shall be included in the program. Each presiding judge may select, and is encouraged to select, all the judges of the superior court or the branch of a superior court as the judges of an exemplary delay reduction program.

This section shall cease to be operative on July 1, 1992.

68607. In accordance with this article and consistent with statute, judges shall have the responsibility to eliminate delay in the progress and ultimate resolution of litigation, to assume and maintain control over the pace of litigation, to actively manage the processing of litigation from commencement to disposition, and to compel attorneys and litigants to prepare and resolve all litigation without delay, from the filing of the first document invoking court jurisdiction to final disposition of the action.

The judges of the program shall, consistent with the policies of this article:

(a) Actively monitor, supervise and control the movement of all cases assigned to the program from the time of filing of the first document invoking court jurisdiction through final disposition.

(b) Seek to meet the standards for timely disposition adopted pursuant to Section 68603.

(c) Establish procedures for early identification of cases within the program which may be protracted and for giving those cases special administrative and judicial attention as appropriate, including special assignment.

(d) Establish procedures for early identification and timely and appropriate handling of cases within the program which may be amenable to settlement or other alternative disposition techniques.

(e) Adopt a trial setting policy which, to the maximum extent possible, schedules a trial date within the time standards adopted pursuant to Section 68603 and which schedules a sufficient number of cases to ensure efficient use of judicial time while minimizing resetting caused by overscheduling.

(f) Commence trials on the date scheduled.

(g) Adopt and utilize a firm, consistent policy against continuances, to the maximum extent possible and reasonable, in all stages of the litigation.

68607.5. No action or proceeding may be removed from a delay reduction program because of a challenge filed under Section 170.6 of the Code of Civil Procedure.

68608. (a) Juvenile, probate, and domestic relations cases shall not be assigned to a delay reduction program, and cases which have been assigned to a judge or judges for all purposes based on subject matter need not be assigned to the program.

(b) Judges shall have all the powers to impose sanctions authorized by law, including the power to dismiss actions or strike pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case. Judges are encouraged to impose sanctions to achieve the purposes of this article.

(c) This section shall become operative July 1, 1992.

68609. (a) The presiding judge of each superior court with an exemplary delay reduction program shall assign a pro rata share of new cases, and an appropriate number of existing cases, to the program, and these cases shall thereafter be handled by the judges of the program for all purposes.

(b) Juvenile, probate, and domestic relations cases shall not be assigned to an exemplary delay reduction program, and cases which have been assigned to a judge or judges for all purposes based on subject matter need not be assigned to the program.

(c) No case shall be removed from an exemplary delay reduction program because of a challenge filed under Section 170.6 of the Code of Civil Procedure.

(d) In order to enforce the requirements of an exemplary delay reduction program and orders issued in cases assigned to it, the judges of the program shall have all the powers to impose sanctions authorized by law, including the power to dismiss actions or strike pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case. Judges are encouraged to impose sanctions to achieve the purposes of this article.

(e) This section shall cease to be operative on July 1, 1992.

68609.5. Each court and the Judicial Council, under subdivision (b) of Section 68619, shall adopt rules to allow for the arbitration of cases designated by the court as "Uninsured Motorist" in which an action is filed against a defendant who is an uninsured motorist and the plaintiff's claim is subject to an arbitration provision.

68610. The Judicial Council, in conjunction with other interested groups as it determines appropriate, may prepare and administer a program, consistent with the policies and requirements of this article, for the training of judges in administering the delay reduction program.

68611. The Judicial Council shall collect and maintain statistics, and shall publish them at least on an annual basis, regarding the compliance of each court in the exemplary delay reduction program with the standards for timely disposition adopted pursuant to Section 68603, with the policies and requirements of this article, and regarding the cases assigned to the judges of each program. On or before July 1, 1991, the Judicial Council shall report to the Legislature on the results of the exemplary delay reduction program and recommend whether the requirements of Section 68607 should be applied to the superior or municipal courts of the state.

This section shall cease to be operative on July 1, 1992.

68612. Judges shall, in consultation with the bar of the county to the maximum extent feasible develop and publish the procedures, standards, and policies which will be used in the program, including time standards for the conclusion of all critical steps in the litigation process, including discovery, and shall meet on a regular basis with the bar of the county in order to explain and publicize the program and the procedures, standards, and policies which shall govern cases assigned to the program. The procedures, standards, and policies to be used in the program shall be filed, distributed, and maintained pursuant to Section 68071 and the California Rules of Court, and shall also be published for general distribution. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all of such procedures, standards, or policies on a statewide basis.

68613. The Judicial Council may receive and expend on the programs established by this article any funds available from county, state, or federal government or other sources which may be available for such purposes.

68614. Nothing in this article is intended to prevent a presiding judge from directing the use of the methods of delay reduction specified in Section 68607 by judges who are not part of an exemplary delay reduction program.

This section shall cease to be operative on July 1, 1992.

68615. In its discretion, the Judicial Council may contract out for performance of any of the duties imposed by this article.

68616. Delay reduction rules shall not require shorter time periods than as follows:

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(b) Service of responsive pleadings within 30 days after service of the complaint. The parties may stipulate to an additional 15 days. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(c) Time for service of notice or other paper under Sections 1005 and 1013 of the Code of Civil Procedure and time to plead after service of summons under Section 412.20 of the Code of Civil Procedure shall not be shortened except as provided in those

sections.

(d) Within 30 days of service of the responsive pleadings, the parties may, by stipulation filed with the court, agree to a single continuance not to exceed 30 days.

It is the intent of the Legislature that these stipulations not detract from the efforts of the courts to comply with standards of timely disposition. To this extent, the Judicial Council shall develop statistics that distinguish between cases involving, and not involving, these stipulations.

(e) No status conference, or similar event, other than a challenge to the jurisdiction of the court, may be required to be conducted sooner than 30 days after service of the first responsive pleadings, or no sooner than 30 days after expiration of a stipulated continuance, if any, pursuant to subdivision (d).

(f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall govern discovery, except in arbitration proceedings.

(g) No case may be referred to arbitration prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided for in subdivision (d). No rule adopted pursuant to this article may contravene Sections 638 and 639 of the Code of Civil Procedure.

(h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of the introduction of evidence at trial, except upon stipulation or motion of the parties.

(i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct calendar courts, challenges pursuant to that section shall be exercised within 15 days of the party's first appearance. Master calendar courts shall be governed solely by Section 170.6 of the Code of Civil Procedure.

(j) This section applies to all cases subject to this article which are filed on or after January 1, 1991.

68618. In each county which has opted under the Trial Court Funding Act of 1985 (Chapter 13 (commencing with Section 77000)), the superior court, at the option of the presiding judge, may elect to establish an exemplary delay reduction program pursuant to this article.

The presiding judge of a superior court electing to establish an exemplary delay reduction program shall notify the Judicial Council of that election, along with the identity of the judges who will participate in the program, and the date the program is scheduled to begin.

This section shall cease to be operative on July 1, 1992.

68618.5. Notwithstanding any other provision of law, the Superior Courts of Sonoma, Humboldt, Napa, Yolo, Fresno, San Joaquin, and Santa Barbara Counties may establish exemplary delay reduction programs and adopt local delay reduction rules pursuant to this article. These rules are not subject to subdivision (b) of Section 68619.

This section shall cease to be operative on July 1, 1992.

68619. (a) The Judicial Council shall review all local delay reduction rules adopted by courts and any revisions or new rules adopted by them and make recommendations to the courts of revisions so that these rules are consistent, to the extent desirable, with other court rules.

(b) The Judicial Council shall adopt uniform delay reduction rules which shall apply to any court that adopts a delay reduction program pursuant to Section 68618.

This subdivision shall cease to be operative on July 1, 1992.

SEC. 4. Section 69907 of the Government Code is amended to read:

69907. (a) In the County of San Diego, in addition to any other compensation and benefits, each judge of the superior court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the superior court shall receive long-term disability insurance to the same extent as provided by the County of San Diego for the classification of chief administrative officer.

SEC. 4.5. Section 69908 is added to the Government Code, to read:

69908. (a) In the County of Riverside, in addition to any other compensation and benefits, each judge of the superior court shall receive the county flexible benefits plan.

(b) Subject to approval by the board of supervisors, each judge of the superior court shall receive long-term disability insurance to the same extent as provided by the County of Riverside for other elected county officials.

SEC. 5. Section 73642 of the Government Code is amended to read:

73642. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of

the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 6. Section 73952 of the Government Code is amended to read:

73952. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 6.5. Section 74145 is added to the Government Code, to read:

74145. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the county flexible benefits plan.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive the same long-term disability insurance as provided by the County of Riverside for other elected county officials.

SEC. 7. Section 74342 of the Government Code is amended to read:

74342. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no

adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 8. Section 74742 of the Government Code is amended to read:

74742. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in such benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 9. Section 75103.5 is added to the Government Code, to read:

75103.5. No county shall directly or indirectly pay from its funds the member contributions to the Judges' Retirement Fund required by this article.

SEC. 9.5. It is the intent of the Legislature that Sections 69908 and 74145, as added to the Government Code by this act and Sections 69907, 73642, 73952, 74342, and 74742 of the Government Code, as amended by this act, shall not serve as a precedent. Rather, the Legislature intends to examine this compensation issue for all

counties.

SEC. 10. Sections 4 to 9, inclusive, of this act shall become operative on January 9, 1991, but shall not apply during a term of office of any judge if that term of office is in effect on that date.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified 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 1233

An act to add Section 900.2 to the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 900.2 is added to the Insurance Code, to read:

900.2. (a) All insurers doing business in this state shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner, in triplicate, on or before June 30 of each year for the year ending December 31 immediately preceding.

(b) The commissioner may grant a 30-day extension of the June 30 filing date upon a showing by the insurer and its independent certified public accountant of the reasons for requesting that extension and the determination by the commissioner of substantial cause for an extension. The request for an extension shall be submitted in writing not less than 20 days prior to the due date in sufficient detail to permit the commissioner to make an informed decision on the requested extension.

(c) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, changes in financial position and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the commissioner. The commissioner shall require the

filing by insurers in the same holding company system of an audited consolidated financial report, except that if the commissioner has reason to believe that an insurer within the holding company system may be in a financially hazardous condition, the commissioner may require the filing of an audited financial report for that insurer.

(d) With the commissioner's approval, an insurer may comply with this section by filing the requisite reports which have been prepared in accordance with generally accepted accounting principles, provided that the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to Section 900 and comparable totals on the audited financial statements, with a written description of the nature of these differences.

(e) The commissioner may promulgate regulations to further the purposes of this section.

CHAPTER 1234

An act to amend Sections 48911, 48912, 48915.5, 48917, and 56325 of the Education Code, relating to education.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 48911 of the Education Code is amended to read:

48911. (a) The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or the principal's designee or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal or the principal's designee or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal or the principal's designee or the superintendent of schools determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's

designee, or the superintendent to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference, and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

(e) A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board.

(f) The parent or guardian of any pupil shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior.

No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at such conference.

(g) In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board, the school district superintendent or other person designated by the superintendent in writing may extend the suspension until such time as the governing board has rendered a decision in the action. However, an extension may be granted only if the superintendent or the superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

(h) Notwithstanding subdivisions (a) and (g), an individual with exceptional needs may be suspended for up to, but not more than, 10 days if he or she poses an immediate threat to the safety of others. In the case of a truly dangerous child, a suspension may exceed 10 days, or the pupil's placement may be changed, or both, if either of the following occurs:

(1) The pupil's parent or guardian agrees.

(2) A court order so provides.

(i) For the purposes of this section, a "principal's designee" is any one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event that there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one such person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for the purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

SEC. 2. Section 48912 of the Education Code is amended to read:

48912. (a) The governing board may suspend a pupil from school for any of the acts enumerated in Section 48900 for any number of schooldays within the limits prescribed by Section 48903, except that an individual with exceptional needs may not be suspended for more than 10 days without the agreement of the parent or a court order.

(b) Notwithstanding the provisions of Section 35145 of this code and Section 54950 of the Government Code, the governing board of a school district shall, unless a request has been made to the contrary, hold closed sessions if the board is considering the suspension of, disciplinary action against, or any other action against, except expulsion, any pupil, if a public hearing upon that question would lead to the giving out of information concerning a school pupil which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5.

(c) Before calling a closed session to consider these matters, the governing board shall, in writing, by registered or certified mail or by personal service, notify the pupil and the pupil's parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board to call and hold a closed session. Unless the pupil or the pupil's parent or guardian shall, in writing, within 48 hours after receipt of the written notice of the board's intention, request that the hearing be held as a public meeting, the hearing to consider these matters shall be conducted by the governing board in closed session. In the event that a written request is served upon the clerk or secretary of the governing board, the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting, shall be in closed session.

SEC. 3. Section 48915.5 of the Education Code is amended to read:

48915.5. (a) In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special

education program, the governing board may order the pupil expelled pursuant to subdivisions (b) and (c) of Section 48915 only if all of the following conditions are met:

(1) An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30.

(2) The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified handicap.

(3) The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

The term "pupil with previously identified exceptional needs," as used in this section, means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 and state special schools.

(b) For purposes of this section, all applicable procedural safeguards prescribed by federal and state law and regulations apply to proceedings to expel pupils with previously identified exceptional needs, except that, notwithstanding Section 56321, subdivision (e) of Section 56506, or any other provision of law, parental consent is not required prior to conducting a preexpulsion educational assessment pursuant to subdivision (e), or as a condition of the final decision of the local board to expel.

(c) Each local educational agency, pursuant to the requirements of Section 56221, shall develop procedures and time lines governing expulsion procedures for individuals with exceptional needs.

(d) The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting conducted pursuant to subdivision (a) preceding the commencement of expulsion proceedings, following the completion of a preexpulsion assessment pursuant to subdivision (e), through actual participation, representation, or a conference call. Each parent shall be notified of his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided. Each parent may request that the meeting be postponed for up to three additional schooldays. In the event that a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement. However, the suspension shall not be extended beyond 10 days unless agreed to by the parent.

(e) In determining whether a pupil should be expelled, the individualized education program team shall base its decision on the results of a preexpulsion educational assessment conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations, which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between

the pupil's behavior and his or her handicapping condition.

In addition to the preexpulsion educational assessment results, the individualized education program team shall also review and consider the pupil's health records and school discipline records.

(f) If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's handicapping condition, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures prescribed under this article.

(g) The parent of each pupil with previously identified exceptional needs has the right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code if the parent disagrees with the decision of the individualized education program team made pursuant to subdivision (f), or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained, pursuant to subdivision (e).

(h) No individual with exceptional needs shall be referred or recommended for expulsion under Section 48915 and no governing board shall conduct expulsion proceedings for an individual with exceptional needs until all of the following have occurred:

(1) A preexpulsion assessment is conducted.

(2) The individualized education program team meets pursuant to subdivision (a).

(3) Due process hearings and appeals, if initiated pursuant to Section 1415 of Title 20 of the United States Code, are completed.

SEC. 4. Section 48917 of the Education Code is amended to read:

48917. The governing board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class, or program which is deemed appropriate for the rehabilitation of the pupil. The governing board's criteria for suspending the enforcement of the expulsion order shall be applied equally to all pupils, including individuals with exceptional needs as defined in Section 56026. During the period of the suspension of the expulsion order, the pupil shall be deemed to be on probationary status. The suspension of an expulsion order under this section may be revoked by the governing board upon the pupil's commission of any of the acts enumerated in Section 48900 or for any violation of the district's rules and regulations governing pupil conduct. Upon revocation of the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order.

Upon satisfactory completion of the rehabilitation assignment of a pupil, the pupil shall be reinstated by the governing board in a school of the district. Upon reinstatement, the governing board may also order the expungement of any or all records of the expulsion proceedings.

A decision of the governing board to suspend an expulsion order

shall not affect the time period and requirements for the filing of an appeal of the expulsion order with the county board of education required under Section 48919. Any appeal shall be filed within 30 days of the original vote of the governing board.

SEC. 5. Section 56325 of the Education Code is amended to read:

56325. (a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources, which may be implemented without complying with subdivision (a) of Section 56321, or a new individualized education program, developed pursuant to Section 56321.

(b) Before the expiration of the 30-day period, the interim placement shall be reviewed by the individualized education program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred.

SEC. 6. It is the intent of the Legislature that the changes effected by this act shall serve only to conform state law to the requirements of the federal law, and shall not impose any additional state requirements beyond those prescribed by federal law.

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 1235

An act to add Section 1940.1 to the Civil Code, relating to real property.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 1940.1 is added to the Civil Code, to read:

1940.1. (a) No person may require an occupant to move, or to check out and reregister, before the expiration of 30 days occupancy if a purpose is to avoid application of this chapter pursuant to paragraph (1) of subdivision (b) of Section 1940.

(b) In addition to any remedies provided by local ordinance, any violation of subdivision (a) is punishable by a civil penalty of five hundred dollars ($500). In any action brought pursuant to this section, the prevailing party shall be entitled to reasonable attorney's fees.

(c) This section does not apply to any person who lets a dwelling unit to an occupant who is excluded from the definition of "persons who hire" pursuant to subdivision (b) of Section 1940. "Persons who hire" do not lose their status as such upon the voluntary payment by the proprietor of any tax under Section 7280 of the Revenue and Taxation Code where the tax levied under that section does not apply to such persons' occupancy.

CHAPTER 1236

An act relating to legal services.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. (a) The California State Bar shall establish a task force for the purpose of developing a study. The task force shall study and develop policy recommendations to provide consumers with an avenue for filing complaints about professional legal practitioners, out-of-state attorneys, and persons fraudulently posing as attorneys who prey on individuals seeking immigration or amnesty advice. The task force shall hold at least two hearings, and shall produce a report that includes recommendations for the most appropriate response or responses to the problem. The task force may take into consideration the recommendations of the State Bar's Commission on Legal Technicians Report. The study shall include, but not be limited to:

(1) Whether a method should be developed to identify all out-of-state attorneys practicing law in California.

(2) Whether the federal supremacy clause prohibits the registration or some other method of identification of out-of-state attorneys whose practice is before the Immigration and Naturalization Service or federal court.

(3) Whether laws and rules, if any, that are applicable to members of the State Bar are also applicable to out-of-state attorneys.

(4) Whether the state can forward complaints on identified attorneys to their respective state bars for disciplinary proceedings.

(5) Whether the jurisdiction of the State Bar of California should be extended to include disciplinary action against an out-of-state attorney when appropriate.

(6) Whether there is a practical method for notifying out-of-state attorneys of a registration requirement.

(7) Parameters of information gathering for identification purposes.

(b) The task force shall include representatives from the following groups or organizations:

(1) One representative from the Los Angeles City Attorney's office consumer protection unit.

(2) One representative from each of the State Bar of California's offices of Trial Counsel, Professional Standards, and Legal Services.

(3) One representative from the United States Immigration and Naturalization Service.

(4) One representative from the California Attorney General's consumer law section.

(5) One representative from California Rural Legal Assistance.

(6) One representative from the Joint Committee on Refugee Resettlement and Immigration Migration Committee.

(c) Each organization represented on the task force shall be responsible for the transportation and incidental expense costs incurred by its representative.

(d) The task force shall report to the Senate Committee on Judiciary and the Assembly Committee on Judiciary on or before December 1, 1991.

CHAPTER 1237

An act to amend Sections 4527, 4621, and 4621.2 of the Public Resources Code, relating to forest practices.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 4527 of the Public Resources Code is amended to read:

4527. "Timber operations" means the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work incidental thereto, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities conducted after January 1, 1988, but excluding preparatory work such as treemarking, surveying, or roadflagging. "Commercial purposes" includes (1) the cutting or removal of trees which are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (2) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber which are subject to the provisions of Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects. Removal or harvest of incidental vegetation from timberlands, such as berries, ferns, greenery, mistletoe, herbs, and other products, which action cannot normally be expected to result in a threat to forest, air, water, or soil resources, does not constitute timber operations.

SEC. 2. Section 4621 of the Public Resources Code is amended to read:

4621. (a) Any person who owns timberlands which are to be devoted to uses other than the growing of timber shall file an application for conversion with the board. The board shall, by regulation, prescribe the procedures for, form, and content of, the application. An application for a timberland conversion permit shall be accompanied by an application fee, payable to the department, in an amount determined by the board pursuant to subdivision (b).

(b) The board shall establish, by regulation, a system of graduated timberland conversion permit fees to finance the cost of administering this article.

SEC. 3. Section 4621.2 of the Public Resources Code is amended to read:

4621.2. (a) If the timberlands which are to be devoted to uses other than the growing of timber are zoned as timberland production zones under Section 51112 or 51113 of the Government Code, the application shall specify the proposed alternate use and shall include information the board determines necessary to evaluate the proposed alternate use. The board shall approve the application for conversion only if the board makes written findings that all of the following exist:

(1) The conversion would be in the public interest.

(2) The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(3) The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved.

(b) The existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for conditionally approving an application for conversion. Conversion shall be considered only if there is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone.

(c) The uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.

(d) In the event that the board delegates its responsibilities under this section to the director pursuant to Section 4627, the director shall make the written findings required by subdivision (a). In the event that the director denies a conversion, the applicant may request a hearing before the board within 15 days of the denial. The hearing shall be scheduled within 60 days from the filing of the appeal.

CHAPTER 1238

An act to amend Sections 11006 and 13307 of the Government Code, relating to state finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 11006 of the Government Code is amended to read:

11006. The Director of Finance may, in writing, authorize the

creation of deficiencies in any appropriation of money made by law in cases of actual necessity and shall authorize the payment of deficiencies out of any money which may be appropriated for these purposes. No deficiency shall be authorized except upon the written authority, first obtained, as provided in this section. Any indebtedness attempted to be created against the state in violation of this section is void, and shall not be allowed by the director or the Controller.

SEC. 2. Section 13307 is added to the Government Code, to read:

13307. In determining whether the General Fund budget, in any given fiscal year, is in a surplus or deficit condition, the controlling factor shall be the fund balance which is the difference between total resources and total expenditures. In determining the fund balance, the following principles shall be applied:

(a) Encumbrances, which are any valid obligation for the delivery of goods or services, should not be counted as a budgetary expenditure until the delivery of the goods or services.

(b) The unencumbered balances of appropriations, which exist when no commitment for an expenditure is made, should be an item of disclosure, but the amount should not be deducted from the fund balance.

(c) Changes affecting a budget subsequent to publication of financial statements, such as actions to disencumber funds, should be reflected in budget documents after documentation is provided.

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 enable the Department of Finance to accurately account for state revenues and expenditures for the 1989–90 fiscal year under the terms of this act, it is necessary that this act take effect immediately.

CHAPTER 1239

An act to amend Sections 11200 and 13975 of, and to add Section 11200.1 to, the Government Code, and to amend Sections 21, 12906, and 12922 of, the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 11200 of the Government Code is amended to read:

11200. The Governor, upon recommendation of the director of the following state departments, may appoint not to exceed two chief

deputies for the Directors of the Departments of Finance, Transportation, and General Services, and not to exceed one chief deputy for the Directors of the Departments of Employment Development, Food and Agriculture, Motor Vehicles, Consumer Affairs, Water Resources, and Parks and Recreation.

The deputies provided for in this section shall be in addition to those authorized by any other law.

SEC. 2. Section 11200.1 is added to the Government Code, to read:

11200.1. The Governor, upon nomination by the Insurance Commissioner, shall appoint one chief deputy, and one deputy director of the Department of Insurance to serve at the pleasure of the Insurance Commissioner.

SEC. 3. Section 13975 of the Government Code is amended to read:

13975. The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corporations, the Department of Commerce, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Savings and Loan, the Department of Transportation, the State Banking Department, the Stephen P. Teale Consolidated Data Center; and the California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

SEC. 4. Section 21 of the Insurance Code is amended to read:

21. "Division," and "department," in reference to the government of this state, mean the Department of Insurance of this state.

SEC. 5. Section 12906 of the Insurance Code is amended to read:

12906. The governmental agency unit heretofore known as the Department of Insurance in the Business, Transportation and Housing Agency is hereby made an independent department. The Department of Insurance is under the control of the Insurance Commissioner. The removal from the Business, Transportation and Housing Agency of the Department of Insurance, effected by this section, shall not affect in any manner the deputies or employees of such governmental agency unit, except as otherwise provided by the act enacted in the 1990 portion of the 1989–90 Regular Session that amended this section, and, except as so provided, their employments and positions are hereby expressly continued in existence. The Insurance Commissioner is not a head of a department within the meaning of Sections 1061 and 11151 of the Government Code.

SEC. 6. Section 12922 of the Insurance Code is amended to read:

12922. The commissioner shall, on or before the first day of August in each year, make a report to the Governor, containing a

tabular statement and synopsis of the reports which have been filed in his or her office and showing, generally, the condition of the insurance business and interests in this state, and other matters concerning insurance. The report shall also contain a detailed verified statement, of the moneys and fees of office received by him or her, and for what purpose.

CHAPTER 1240

An act to amend Section 100.45 of, and to add and repeal Sections 100.41 and 100.46 of, the Streets and Highways Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 100.41 is added to the Streets and Highways Code, to read:

100.41. (a) Notwithstanding Section 100.2, the department may construct a freeway pursuant to subdivision (b) on the route determined by the commission, if all of the following conditions have been met:

(1) The freeway is included within the California freeway and expressway system and a route has been adopted.

(2) An environmental impact report has been prepared and approved on the unconstructed portion of the freeway.

(3) Construction has commenced along the adopted route, but has not been completed, and delay in concluding an agreement will result in increased costs for the project.

(4) The freeway project is funded, in whole or in part, from the proceeds of a locally imposed sales and use tax dedicated exclusively for transportation purposes.

(5) The county transportation authority responsible for administering the sales and use tax revenues was in existence on or before December 31, 1984.

(6) Freeway agreements pursuant to Section 100.2 have been approved by a majority of the other counties or cities along the route.

(b) Under the conditions set forth in paragraphs (1) to (6), inclusive, of subdivision (a), the department shall enter into a freeway agreement with the county board of supervisors for the unconstructed portion of the freeway when agreement with a county or city pursuant to Section 100.2 is not possible due to an impasse, as determined by the county transportation authority.

(c) Prior to entering into a freeway agreement pursuant to subdivision (b), the county board of supervisors shall hold a public

hearing on, and adopt findings defining the specific nature of, the impasse and shall, after consideration of the local entities involved in the impasse, adopt a resolution, which shall be binding on all local entities involved in the impasse, resolving that impasse. The resolution may incorporate any previously executed agreements entered into by any of the local entities involved in the impasse.

(d) The county transportation authority shall include in its transportation expenditure plan the terms of the resolution adopted by the county board of supervisors pursuant to subdivision (c). If the proceeds of the locally imposed sales and use tax administered by the county transportation authority are insufficient to complete all projects included within that expenditure plan, the county transportation authority shall establish a schedule of priorities for those projects and shall fund the projects in accordance with that schedule.

(e) This section applies only to a freeway agreement entered into after resolving an impasse as specified in this section. Nothing in this section alters or affects any provision of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, the right of any city or county to enter into a freeway agreement pursuant to Section 100.2, or any agreement entered into by a city or county and the department for the mitigation of environmental impacts of any proposed freeway construction.

(f) This section shall become inoperative if the director (1) finds and determines that each local agency involved in an impasse, as determined by the county transportation authority, has entered into a freeway agreement pursuant to Section 100.2 by October 1, 1990, and (2) submits a notice of that finding and determination to the Secretary of State.

(g) 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. Section 100.45 of the Streets and Highways Code is amended to read:

100.45. When the department constructs a freeway on the route selected pursuant to Section 100.4 the department shall meet and confer with affected counties and cities with respect to the design of the portion of the freeway to be constructed within the jurisdiction of the affected county or city.

SEC. 3. Section 100.46 is added to the Streets and Highways Code, to read:

100.46. (a) When the department constructs a freeway on the route selected pursuant to Section 100.41, the department and the county transportation authority specified in paragraph (5) of subdivision (a) of Section 100.41 shall meet and confer with affected counties and cities with respect to the design of the portion of the freeway to be constructed within the jurisdiction of the affected county or city.

(b) This section shall become inoperative if the director (1) finds and determines that each local agency involved in an impasse, as determined by the county transportation authority, has entered into a freeway agreement pursuant to Section 100.2 by October 1, 1990, and (2) submits a notice of that finding and determination to the Secretary of State.

(c) 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. 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.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that voter-approved freeway projects can proceed without delay to avoid increased costs, and to improve traffic congestion conditions in these corridors as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 1241

An act to add Section 14503.5 to the Welfare and Institutions Code, relating to AIDS.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

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

(a) The AIDS virus is transmitted by sexual contact or through exposure to blood of an infected person. Public health data and research have confirmed these routes of transmission in homosexual and bisexual men, intravenous drug users, hemophiliacs, transfusion recipients, infants born to infected women, and heterosexual partners of infected persons.

(b) Over 10,893 persons have died from AIDS in California between January 1, 1980, and March 1, 1989, and the projected number to die by 1992 is 34,000.

(c) To date, since there is no effective clinical treatment or prophylactic vaccine for the basic immunodeficiency of AIDS, the best "treatment" is prevention. The strongest tool in prevention is information and education. The United States Surgeon General maintains that education and information are essential modalities in controlling the transmission of the HIV infection.

(d) Family planning clients in general constitute a population at risk of HIV infection. They represent a group of people who are sexually active or who plan to be, and, in many cases, are unserved by other parts of the health care system.

SEC. 2. Section 14503.5 is added to the Welfare and Institutions Code, to read:

14503.5. (a) As used in this section:

(1) "AIDS" means acquired immune deficiency syndrome.

(2) "Human immunodeficiency virus" or "HIV" means the etiologic virus of AIDS.

(3) "HIV test" means "HIV test" as defined in Section 26 of the Health and Safety Code.

(b) The purpose of this article is to ensure that state-funded family planning programs offer AIDS information and referral services to their client population.

(c) It is the intent of the Legislature that family planning clients learn how to prevent the transmission of HIV, and that they take steps to prevent its transmission.

(d) For purposes of this section, "clients" shall include, but shall not be limited to, all of the following:

(1) New clients to a family planning program.

(2) Clients making annual visits to a family planning program.

(3) Clients seeking pregnancy testing or family planning services.

(4) Clients seeking diagnosis and treatment for sexually transmitted diseases.

(e) Any family planning program that contracts with the Office of Family Planning to provide family planning services shall do all of the following:

(1) Provide brochures or other written materials to family planning clients which describe the high-risk conditions and behaviors for becoming infected with HIV, and ways to prevent the transmission of HIV infection. To the maximum extent possible, the brochure or other written materials provided by any family planning program shall be culturally relevant and appropriate to the client populations served by the programs.

(2) Provide, as needed, family planning clients with information about and referrals to local confidential or anonymous testing and counseling sites, AIDS education programs, and other supportive services.

(f) Brochures and information required pursuant to subdivision

(e) may be incorporated into existing information and health education programs provided by a family planning program.

(g) The State Department of Health Services shall make every effort to obtain brochures and other written materials from existing resources. Local family planning programs are encouraged to suppplement the brochures with other available resources, to the extent that they deem necessary and appropriate.

SEC. 3. (a) The State Department of Health Services shall review existing programs administered by the Office of AIDS and other department activities that provide AIDS-related services and information, to identify unmet service and information needs and to recommend funding priorities.

(b) The department shall assess whether existing funding priorities for AIDS services and information conform with existing service needs and trends. The department shall take into account new populations becoming infected with HIV, new approaches in reaching persons at risk of becoming infected with HIV, and appropriate treatment modalities for persons with AIDS and AIDS-related conditions. The department shall make recommendations for addressing unmet needs.

(c) The department shall report its findings and recommendations to the Legislature on or before May 1, 1991.

SEC. 4. (a) Section 2 of this act shall be operative on July 1, 1991, except Section 2 shall not be operative in any fiscal year unless funds allocated in that fiscal year to family planning by the State Department of Health Services are greater than the funds allocated to family planning by the State Department of Health Services for the 1990–1991 fiscal year, as determined annually in the Budget Act, or if funds specifically targeted for this purpose become available, as determined by the State Director of Health Services. This act is not intended to require that family planning contractors expend additional funds from their existing contracts in order to purchase brochures, unless additional funds are provided by the department specifically for this purpose. The director shall notify each house of the Legislature on or before February 1 of each year whether the conditions of this subdivision have been met.

(b) Section 3 of this act shall be implemented with existing funds and resources available to the State Department of Health Services.

CHAPTER 1242

An act relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. The sum of four hundred sixty-six thousand five hundred forty-nine dollars ($466,549) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges, in augmentation of Item 6870-011-001 of Section 2.00 of the Budget Act of 1990, Chapter 467 of the Statutes of 1990, for purposes of program 20.20.010-Special Services and Operations-Faculty and Administrative Credentials.

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

This bill affects the rights of community college employees to receive credentials in a timely manner. In order for this act to become operative in 1990 with respect to these rights, it is necessary that this act take effect immediately.

CHAPTER 1243

An act to add Chapter 10.3 (commencing with Section 13894.5) to Title 6 of Part 4 of the Penal Code, relating to driving offenses, and making an appropriation therefor.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Chapter 10.3 (commencing with Section 13894.5) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 10.3. COMPUTER FINGERPRINT PROGRAM

13894.5. The Legislature finds and declares all of the following:

(a) The people of California have a public safety interest in ensuring that individuals who are arrested and convicted of driving a motor vehicle while under the influence of an alcoholic beverage, any drugs, or any controlled substances receive the appropriate

sentence or penalty based on that individual's complete driving history.

(b) An accurate record of the prior arrests and convictions of a person for driving under the influence may not be available to the judge at the time of sentencing because the person may have used an alias or some other form of false identification.

(c) There is a need for a reporting system that can identify, in a timely fashion, the prior arrest histories of those arrested for driving under the influence.

(d) The intent of this act is to require that a pilot project relating to the fingerprinting of those persons arrested for driving under the influence be implemented in a designated county.

13894.6. The Department of Justice shall designate an appropriate county or portion of a county, with the county's consent, for a pilot fingerprint project. The designated area should be as self-contained as possible to increase the likelihood that the arrestees' residences, places of work, and general driving patterns are within its boundaries. In consultation with the department, the sheriff of the designated county shall fingerprint persons who are arrested for a violation of Section 23152 or 23153 of the Vehicle Code using a livescan fingerprint computer system. The sheriff of the county designated by the Department of Justice shall cooperate with the department in the county's implementation of the pilot project

13894.7. Under the pilot project, the sheriff of the designated county shall statistically track the persons arrested for driving under the influence for an 18-month period to determine whether the same individuals are arrested for subsequent driving offenses during the pilot period and whether the person's prior records in the pilot project fingerprint data base are successfully matched as a result of the fingerprint identification process.

13894.8. The sheriff of the portion of the county designated by the Department of Justice shall take the fingerprints of persons arrested for driving under the influence of alcohol or drugs, or both, with the livescan fingerprint computer system.

13894.9. The Bureau of Crime Statistics, within the Department of Justice, shall advise on the study's design, review the findings, and assist the county in preparing a report to the Legislature which shall be submitted by the designated county to the Legislature on or before November 1, 1992. The report shall include all of the following:

(a) The basis for the selection of the county or the portion of a county designated for the implementation of the pilot project, including consideration of the number of persons arrested for driving under the influence in the jurisdiction chosen, the geography, and the population.

(b) The staffing and other support requirements of the designated county sheriff's department which assisted in the taking and processing of the fingerprints with regard to the implementation of the pilot project.

(c) Any recommendations by the sheriff or the department for legislation as a result of the pilot project.

SEC. 2. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the Fingerprint Fees Account in the General Fund to the Department of Justice for allocation as follows:

(a) Twenty thousand dollars ($20,000) to pay the costs of the Department of Justice in designing and assisting in the pilot project and the preparation and submittal of the report required by Chapter 10.3 (commencing with Section 13894.5) of Title 6 of Part 4 of the Penal Code.

(b) One hundred twenty-five thousand dollars ($125,000) to the county selected by the Department of Justice to pay for additional livescan computer equipment for the pilot project and to help pay the costs of the county sheriff in implementing the pilot project required by Chapter 10.3 (commencing with Section 13894.5) of Title 6 of Part 4 of the Penal Code.

CHAPTER 1244

An act to add Section 965.3 to, and to repeal and add Section 965.65 of, the Government Code, relating to the payment of judgments and settlement claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

I am deleting the $37,758 appropriation contained in Section 4 (g) of Senate Bill No 1768

This appropriation for the claim of *Schwartzman v State of California, et al* is unnecessary This claim will be paid by the Department of Industrial Relations through a process which certifies availability of funds from within its existing budgeted resources

With this deletion, I approve Senate Bill No 1768

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 965.3 is added to the Government Code, to read:

965.3. (a) The Attorney General shall notify the Controller in writing when all claims for which an appropriation is made to the the Department of Justice or the Attorney General pursuant to subdivision (b) of Section 965 have been paid. The Controller shall, at the close of the fiscal year in which notice of payment is received from the Attorney General, cause any undisbursed balance to revert to the fund from which the appropriation was made.

(b) Whenever an appropriation exceeds the actual amount

necessary to satisfy a settlement in accordance with the settlement agreement or a judgment, the excess shall revert to the fund from which the appropriation was made.

SEC. 2. Section 965.65 of the Government Code is repealed.

SEC. 3. Section 965.65 is added to the Government Code, to read:

965.65. (a) When a request is made for certification of availability of funds, approval of a settlement, or inclusion of a claim in a claims bill pursuant to Section 948, 965, or 965.2 for a claim in excess of thirty-five thousand dollars ($35,000) against the state which arose from the activities of any state agency or employee, the agency shall report to the Director of Finance and the Legislative Analyst concerning any action it has taken or proposes to take to prevent the future occurrence of circumstances similar to those upon which the claim was based, including any imposition of disciplinary action.

(b) On or before April 1 of each year, the Legislative Analyst shall submit a report to the chairpersons of the committees which consider appropriations and to the Chairperson of the Joint Legislative Budget Committee, describing the actions taken by each agency described in subdivision (a) to prevent the future occurrence of circumstances described in subdivision (a) with respect to all such claims approved for payment by the Department of Finance during the preceding 12 months.

SEC. 4. The sum of nine hundred ninty-seven thousand two hundred eighty-seven dollars and thirty-two cents ($997,287.32) is hereby appropriated for allocation to pay the following judgments and settlement claims pursuant to the following schedule:

(a) Three hundred thousand dollars ($300,000) from the General Fund to the Attorney General for the case of Crawford v. Intercare Medical Center (Superior Ct., Los Angeles Co., Case No. NCC 34694B).

(b) Twenty-eight thousand two hundred eighty dollars and thirty-two cents ($28,280.32) from the unencumbered balance of category (b) of Item 4300-101-001 of Section 2.00 of the Budget Act of 1990 to the Attorney General for the case of Behrens v. North Coast Regional Center (Superior Ct., Mendocino Co., Case No. 48338).

(c) Seventy-six thousand six hundred sixty dollars ($76,660) from Item 5460-001-001 of Section 2.00 of the Budget Act of 1990 to the Attorney General for the case of Nick O. v. C.A. Terhune, et al.

(d) One hundred sixty thousand dollars ($160,000) from Item 1760-001-666 of Section 2.00 of the Budget Act of 1990 to the Attorney General for the case of Stewart v. State of California, et al.

(e) Two hundred forty-two thousand eight hundred eighteen dollars ($242,818) from the Motor Vehicle Account in the State Transportation Fund to the Attorney General for the case of Frederick Augusta v. M.J. Cipriano.

(f) One hundred fifty-one thousand seven hundred seventy-one dollars ($151,771) from the Motor Vehicle Account in the State

Transportation Fund to the Attorney General for the case of Kyong Kim v. Juanita Rodriquez.

(g) Thirty-seven thousand seven hundred fifty-eight dollars ($37,758) from the General Fund to the Department of Industrial Relations for payment of the attorney fee award in the case of Schwartzman v. State of California, et. al.

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 pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 1245

An act to amend Section 5025.3 of the Public Resources Code, relating to state lands.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 5025.3 of the Public Resources Code is amended to read:

5025.3. The Governor's Mansion, located at 1526 H Street, Sacramento, shall be under the control and management of the department and shall be named the Old Governor's Mansion State Historic Park, subject to the approval of the State Park and Recreation Commission. The Director of General Services shall transfer jurisdiction over the property and all its contents to the Department of Parks and Recreation, which shall administer the property as a unit of the state park system.

SEC. 2. Notwithstanding any other provision of law, the Director of Corrections may lease to the City of Folsom, at a lease amount to be determined by the director, all or any portion of a parcel of land consisting of approximately five acres of unimproved real property situated in the County of Sacramento within Rancho Rio de Los Americano for a park, greenbelt, courthouse, or police station, or any combination thereof, for a period not to exceed 50 years.

SEC. 3. After deducting the amount necessary, if any, to implement Section 2, the net proceeds of any moneys received for the lease of the parcel of land described in that section shall be deposited in the General Fund.

SEC. 4. All mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet on the parcel of land described in Section 2, shall be reserved to the state, without

surface right of entry.

CHAPTER 1246

An act to add Article 14.6 (commencing with Section 1066) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Article 14.6 (commencing with Section 1066) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 14.6. Robbins-Seastrand Health Insurance Guaranty Association Act

1066. This article shall be known and may be cited as the Robbins-Seastrand Health Insurance Guaranty Association Act.

1066.1. (a) The purpose of this article is to protect, subject to certain limitations, the persons specified in subdivision (a) of Section 1066.2, against failure in the performance of contractual obligations, under health insurance policies and contracts, because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(b) To provide this protection, an association of insurers is hereby created to pay benefits and to continue coverages as limited in this article, and members of the association are subject to assessment to provide funds to carry out the purposes of this article.

1066.2. (a) This article shall provide coverage for the policies specified in subdivision (b):

(1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under those policies or contracts, and who either:

(A) Are residents.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers which issued the policies are domiciled in this state.

(ii) The insurers have never held a license or certificate of authority in the states in which those persons reside.

(iii) Those states have associations similar to the association

created by this article.

(iv) Those persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage for direct, nongroup health policies or contracts, and for certificates under direct group policies and contracts.

(2) This article shall not provide coverage for the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any plan or program of any employer, association, or similar entity to provide health benefits to its employees or members to the extent that the plan or program is self-funded or insured, including, but not limited to, benefits payable to any employer, association, or similar entity under the following:

(i) A Multiple Employer Welfare Arrangement as defined in Section 514 of the Employee Retirement Income Security Act of 1974, as amended.

(ii) A minimum premium group insurance plan.

(iii) A stop-loss group insurance plan.

(iv) An administrative-services-only contract.

(D) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of that policy or contract.

(E) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue that policy or contract in this state.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of (1) the contractual obligations for which the insurer is liable or for which the insurer would have been liable if it were not an impaired or insolvent insurer, or (2) $200,000 in health insurance benefits, an amount that shall annually increase or decrease based upon the health care cost component of the consumer price index.

1066.3. This article shall be liberally construed to effect the purpose under Section 1066.1 which shall constitute an aid and guide to interpretation.

1066.4. As used in this article:

(a) "Account" means any of the two accounts created under Section 1066.5.

(b) "Association" means the Robbins-Seastrand California Health Insurance Guaranty Association created under Section 1066.5.

(c) "Commissioner" means the Insurance Commissioner.

(d) "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion

thereof, for which coverage is provided under Section 1066.2.

(e) "Covered policy" means any policy or contract under Section 1066.2.

(f) "Impaired insurer" means a member insurer which, after January 1, 1991, is not an insolvent insurer, and (1) is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or (2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(g) "Insolvent insurer" means a member insurer which, after January 1, 1991, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(h) "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under Section 1066.2 and includes any insurer whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include the following:

(1) A mandatory state pooling plan.

(2) A mutual assessment company or any entity that operates on an assessment basis.

(3) An insurance exchange.

(4) A nonprofit hospital service plan.

(5) A health care service plan.

(6) A fraternal benefit society.

(i) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(j) "Premiums" means amounts received on covered policies or contracts less premiums, considerations, and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subdivision (b) of Section 1066.2.

(k) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

(*l*) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

1066.5. (a) There is hereby created a nonprofit legal entity to be known as the Robbins-Seastrand California Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 1066.9 and shall exercise its powers through a board of directors established under Section 1066.6. For purposes of administration and assessment the association shall maintain a health insurance account.

The health insurance account shall be known as the Robbins-Seastrand Health Insurance Account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of this code. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

1066.6. (a) The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

1066.7. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer.

(2) Provide moneys, pledges, notes, guarantees, or other means proper to effectuate paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1).

(3) Loan money to the impaired insurer.

(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2), the association shall, in its discretion, either:

(A) Take any of the actions specified in subdivision (a), subject to

the conditions therein.

(B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, and supplemental benefits for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of paragraph (1) only if all of the following is applicable:

(A) The laws of the state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(i) The delinquency proceeding shall not be dismissed.

(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.

(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(B) (i) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state.

(ii) If the impaired insurer is a foreign or alien insurer:

(I) It has been prohibited from soliciting or accepting new business in this state.

(II) Its certificate of authority has been suspended or revoked in this state.

(III) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(1) (A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer, (B) assure payment of the contractual obligations of the insolvent insurer, (C) provide moneys, pledges, guarantees, or other means reasonably necessary to discharge those duties.

(2) With respect only to those health insurance policies, provide benefits and coverages in accordance with subdivision (d).

(d) When proceeding under subdivision (b) or (c), the association shall, with respect to those health insurance policies do the following:

(1) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) With respect to group policies, not later than the earlier of the next renewal date under the policies or contracts or one year, but in

no event less than 30 days, after the date on which the association becomes obligated with respect to those policies.

(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under those policies or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to those policies.

(2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies 30 days' notice of the termination of the benefits provided.

(3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which time the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(4) (A) In providing the substitute coverage required under paragraph (3), the association (i) may offer either to reissue the terminated coverage or to issue an alternative policy, and (ii) shall consider obtaining coverage for a medically uninsurable person from the program established under Part 6.5 (commencing with Section 12700) of Division 2.

(B) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(C) The association may reinsure any alternative or reissued policy.

(5) (A) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated

policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(7) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date that coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(e) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or coverage with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with this article.

(f) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(g) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(h) In carrying out its duties under subdivisions (b) and (c), the association may, subject to court approval, impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest.

(i) If the association fails to act within a reasonable period of time as provided in subdivisions (b), (c) and (d), the commissioner shall have the powers and duties of the association under this article with respect to impaired or insolvent insurers.

(j) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(k) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article. The standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or

contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(*l*) (1) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provisions of substitute or alternative coverages. The association may require an assignment to it of those rights and cause of action by any payee, policy or contract beneficiary, or insured as a condition precedent to the receipt of any right or benefits conferred by this article upon that person.

(2) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(3) In addition to paragraphs (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(m) The association may do all of the following:

(1) Enter into contracts necessary or proper to carry out the provisions and purposes of this article.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 1066.8 and to settle claims or potential claims against it.

(3) Borrow money to effect the purposes of this article. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(4) Employ or retain persons necessary to handle the financial transactions of the association, and to perform those other functions that become necessary or proper under this article.

(5) Take legal action necessary to avoid payment of improper claims.

(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a health insurer, but in no case may the association issue policies or contracts other than those issued to perform its obligations under this article.

(n) The association may join an organization of one or more other state associations of similar purposes to further the purpose and administer the powers and duties of the association.

1066.8. (a) For the purpose of providing the funds necessary to

carry out the powers and duties of the association, the board of directors shall assess the member insurers at the time and for the amounts that the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at the rate set forth in 28 U.S.C. Sec. 1961 on and after the due date.

(b) There shall be two assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of subdivision (e) of Section 1066.11. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 1066.7 with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A nonpro rata assessment shall not exceed one hundred fifty dollars ($150) per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premimums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to the premiums received on business in this state for those calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under subdivision (b) and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) (1) The total of all Class B assessments upon a member insurer shall not in any one calendar year exceed 1 percent of the insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which an insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in the account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(f) The board may, by any equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to the account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in the account to provide funds for the continuing expenses of the association and for future losses.

(g) It shall be proper for any member insurer, in determining its premium rates as to any kind of insurance within the scope of this article, to consider the amount reasonably necessary to meet its assessment obligations under this article.

(h) The association shall issue to each insurer paying an assessment under this article, other than Class A assessment, a certification of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time that the commissioner may approve

(i) (1) The plan of operation adopted pursuant to Section 1066.9 shall contain provisions whereby each member insurer is required to recoup over a reasonable length of time a sum reasonably calculated to recoup the assessments paid by the member insurer under this article by way of a surcharge on premiums charged for insurance policies to which this article applies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agent's commission.

(2) Member insurers who collect surcharges in excess of premiums paid pursuant to this section for a insolvent insurer shall remit the excess to the association as an additional premium within 120 days after the end of the collection period as determined by the

association. The excess shall be applied to reduce future premium charges for that insurer in the appropriate category.

(3) The plan of operation may permit a member insurer to omit the collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge. However, nothing in this paragraph shall relieve the member insurer of its obligation to recoup the amount of the surcharge otherwise collectible.

(j) Any statement of the amount of surcharge required to be provided by the association shall include a description of, and purpose for, the Robbins-Seastrand California Health Insurance Guaranty Association, as follows:

"Companies writing health insurance business in California are required to participate in the Robbins-Seastrand California Insurance Health Guaranty Association. If a company becomes insolvent, the Robbins-Seastrand California Health Insurance Guaranty Association settles unpaid claims and assesses each insurance company for its fair share."

"California law requires all companies to surcharge policies to recover these assessments. If your policy is surcharged, "CA Surcharge" with an amount will be displayed on your premium notice."

1066.9. (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he or she has not disapproved it within 30 days.

(2) If the association fails to submit a suitable plan of operation on or before April 30, 1991, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate this article. Those rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements of this article do all of the following:

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under Section 1066.6.

(3) Establish regular places and times for meetings including telephone conference calls of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(5) Establish procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under

Section 1066.8.

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under paragraph (3) of subdivision (m) of Section 1066.7 and Section 1066.8, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided in this article.

1066.10. (a) In addition to the duties and powers enumerated elsewhere in this article, the commissioner shall do all of the following:

(1) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer.

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this article.

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. The forfeiture shall not exceed 5 percent of the unpaid assessment per month, but not forfeiture shall be less than one hundred dollars ($100) per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if that appeal is taken within 60 days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this article.

1066.11. (a) To aid in the detection and prevention of insurer insolvencies or impairments, it shall be the duty of the commissioner to do all of the following:

(1) To notify the commissioners of all the other states, territories of the United States and the District of Columbia when he or she takes any of the following actions against a member insurer:

(A) Revocation of a license.

(B) Suspension of license.

(C) Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

The notice shall be mailed to all commissioners within 30 days following the action taken or the date on which the action occurs.

(2) To report to the board of directors, the Legislature, and the Governor when he or she has taken any of the actions set forth in paragraph (1) or has received a report from any other commissioner indicating that any action has been taken in another state. The report to the board of directors, the Legislature, and the Governor shall contain all significant details of the action taken on the report received from another commissioner.

(3) To report to the board of directors when he or she has reasonable cause to believe from any examination, whether completed or in process, of any member company that company may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the National Association of Insurance Commissioners (NAIC) Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the NAIC, and the board may use the information contained therein to carrying out its duties and responsibilities under this section. That report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendation of the board of directors concerning any matter affecting his or her duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Those reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority

vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(e) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of that request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons the commissioner designates. The cost of the examination report shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subdivision (a).

The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(g) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing information it may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by those other associations.

1066.12. (a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under Section 1066.7. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subdivision shall limit the duty of the association to render a report of its activities under Section 1066.13.

(c) For the purpose of carrying out is obligations under this article, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision (m) of Section 1066.7.

Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this article. Assets attributable to covered policies are that proportion of the assets which the reserves that should have been established for those policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of that insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under Section 1066.7 with respect to that insurer have been fully recovered by the association.

(e) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under that order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of the distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (2) to (4), inclusive.

(2) No distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who as an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subdivision shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under paragraph (3) is insolvent, all its affiliates that controlled it at the time the distribution was paid shall

be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

1066.13. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner and the Legislature each year, not later than 120 days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

1066.14. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

1066.15. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his or her representatives, for any action or omission by them in the performance of their powers and duties under this article. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

1066.16. All proceedings in which the insolvent insurer is a party in any court of this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default the association may apply to have that judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

1066.17. (a) No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the Health Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Robbins-Seastrand Health Insurance Guaranty Association Act. However, this subdivision shall not apply to the Robbins-Seastrand California Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

(b) On or before June 1, 1991, the association shall prepare a summary document describing the general purposes and current limitations of this article in compliance with subdivision (c). The document shall be submitted to the commissioner for approval. Sixty days after receiving approval, no insurer may deliver a policy or contract described in Section 1066.2, to a policy or contract holder

unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except if subdivision (d) applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of the document shall not mean that either the policy or the contract or the holder thereof will be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to this article may require. Failure to receive the document shall not give the policyholder, contractholder, certificate holder, or insured any greater rights than those stated in this article.

(c) The document prepared under subdivision (b) shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall do all of the following:

(1) State the name and address of the health insurance guaranty association and insurance department.

(2) Prominently warn the policy or contract holder that the Robbins-Seastrand California Health Insurance Guaranty Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state.

(3) State that the insurer and its agents are prohibited by law from using the existence of the Robbins-Seastrand California Health Insurance Guaranty Association for the purpose of sales, solicitation or inducement to purchase any form of insurance.

(4) Emphasize that the policy or contract holder should not rely on coverage under the Robbins-Seastrand California Health Insurance Guaranty Association when selecting an insurer.

(5) Provide other information as directed by the commissioner.

(d) No insurer or agent may deliver a policy or contract described in paragraph (1) of subdivision (b) of Section 1066.2, and excluded under subparagraph (A) of paragraph (2) of subdivision (b) of Section 1066.2 from coverage under this article unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Robbins-Seastrand California Health Insurance Guaranty Association. The commissioner shall by rule specify the form and content of the notice, however the following form for the disclaimer notice is suggested:

ROBBINS-SEASTRAND CALIFORNIA HEALTH INSURANCE GUARANTY ASSOCIATION DISCLAIMER

"The Robbins-Seastrand California Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent. COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY. Even if coverage is

provided, there are significant limits and exclusions. Coverage is always conditioned on residence in this state. Other conditions may also preclude coverage.

The Robbins-Seastrand California Health Insurance Guaranty Association or the Department of Insurance will respond to any questions you may have which are not answered by this document. Your insurer and agent are prohibited by law from using the existence or its coverage to sell you an insurance policy.

You should not rely on availability of coverage under the Robbins-Seastrand California Health Insurance Guaranty Association when selecting an insurer. (Insert addresses of the association and department.)"

Insurers and agents shall deliver the document and disclaimer described under subdivisions (b) and (c) when a customer is solicited if a "free look" period is not required by state law.

1066.18. This article shall not apply to any insurer which is insolvent or unable to fulfill its contractual obligations on January 1, 1991

CHAPTER 1247

An act to add and repeal Chapter 2.5 (commencing with Section 9150) of Division 8.5 of the Welfare and Institutions Code, relating to aging.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

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

(a) In 1988, the Health and Welfare Agency published "A Study of California's Publicly Funded Long-Term Care Programs" to identify and project the long-term care needs of California's residents.

(b) The study states that it is the policy of the Health and Welfare Agency to explore the feasibility of developing minimum uniform data reporting elements among the publicly funded long-term care programs and other programs.

(c) The Department of Aging, the State Department of Social Services, the State Department of Health Services, the Department of Rehabilitation, the State Department of Developmental Services, and the State Department of Mental Health provide services for older persons and younger functionally impaired persons who are at risk of premature institutionalization.

(d) The resources available to service older and functionally impaired persons are limited and duplication of efforts must be

avoided.

(e) Certain area agencies on aging and county departments have attempted to provide more centralized case management and service delivery to older persons and younger functionally impaired persons by consolidating their administrative structure, but have discovered that they are presented with duplicative data reporting requirements from several different state departments, often on a single individual.

(f) The effective and efficient planning and delivery of community-based systems of care requires that these departments develop systems for integrating basic client or service data from the state's various community-based long-term care system programs into a statewide, client-oriented management information system.

SEC. 2. Chapter 2.5 (commencing with Section 9150) is added to Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 2.5. DATA COLLECTION AND MANAGEMENT SYSTEM REVIEW

9150. The Health and Welfare Agency may designate a lead department within the agency which shall convene a task force, which shall be comprised of representatives of the following groups:

(a) Appropriate state departments, agencies, boards, or commissions.

(b) Local government agencies with responsibility for the administration of programs for adults and for the provision of services to adults.

(c) Community-based long-term care programs.

(d) Community legal services.

(e) Consumer and patients' rights groups.

(f) Senior advocate groups.

(g) Any other group or groups which are determined by the Health and Welfare Agency or the lead department to be appropriate to the task force.

9151. The task force convened pursuant to this chapter shall inventory, review, and evaluate existing data collection and managements systems applied in the programs for elderly persons serviced by those agencies described in subdivision (b) of Section 9150, including hardware and software currently used by the programs.

9152. The task force shall research the feasibility of integrating the systems of data collection and the management of client and service information, shall formulate recommendations to reduce duplication of effort, and shall provide accurate and comprehensive information regarding older persons and younger functionally impaired persons.

9153. The task force shall remain in existence until January 1, 1993.

9154. The Health and Welfare Agency shall report the findings and recommendations of the task force to the appropriate committees of

the Legislature by July 1, 1992.

9155. 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 1248

An act to amend Sections 8574.1 and 8574.4 of, to amend and renumber Sections 8574.7, 8574.8, 8574.9, 8574.11, 8574.12, 8574.13, 8574.14, and 8574.15 of, to add Sections 8574.7, 8574.8, 8574.9, and 8574.10 to, to add Chapter 7.4 (commencing with Section 8670.1) to Division 1 of Title 2 of, and to repeal Sections 8574.5 and 8574.6 of, the Government Code, to repeal Section 152 of the Harbors and Navigation Code, to add Division 7.8 (commencing with Section 8750) to the Public Resources Code, and to amend Section 13272 of the Water Code, relating to oil spills, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 8574.1 of the Government Code is amended to read:

8574.1. In addition to any other authority conferred upon the Governor by this chapter, the Governor shall establish a state oil spill contingency plan pursuant to this article.

SEC. 2. Section 8574.4 of the Government Code is amended to read:

8574.4. State agencies designated to implement the contingency plan shall account for all state expenditures made under the plan with respect to each oil spill. Expenditures accounted for under this section from an oil spill in marine waters shall be paid from the Oil Spill Response Trust Fund created pursuant to Section 8670.46 All other expenditures accounted for under this section shall be paid from the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund provided for in Article 3 (commencing with Section 13440) of Chapter 6 of Division 7 of the Water Code. If the party responsible for the spill is identified, that party shall be liable for the expenditures accounted for under this section, in addition to any other liability which may be provided for by law, in an action brought by the Attorney General. The proceeds from any such action shall be paid into the State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund, unless the spill was in marine waters, in which case the proceeds shall be paid into the Oil Spill Response Trust Fund.

SEC. 4. Section 8574.5 of the Government Code is repealed.

SEC. 5. Section 8574.6 of the Government Code is repealed.

SEC. 6. Section 8574.7 of the Government Code is amended and renumbered to read:

8574.16. The Governor shall establish a state toxic disaster contingency plan pursuant to this article.

SEC. 7. Section 8574.7 is added to the Government Code, to read:

8574.7. The Governor shall require the administrator, in consultation with the State Interagency Oil Spill Committee and not in conflict with the National Contingency Plan, to amend the state oil spill contingency plan by adding a marine oil spill contingency planning section which provides for the best achievable protection of the coast and marine waters. The marine oil spill contingency planning section shall consist of all of the following elements:

(a) A state marine response element that specifies the hierarchy for state and local agency response to an oil spill. The element shall define the necessary tasks for oversight and control of cleanup and removal activities associated with a marine oil spill and shall specify each agency's particular responsibility in carrying out these tasks. The element shall also include an organizational chart of the state marine oil spill response organization and a definition of the resources, capabilities, and response assignments of each agency involved in cleanup and removal actions in a marine oil spill.

(b) A regional and local planning element which shall provide the framework for the involvement of regional and local agencies in the state effort to respond to a marine oil spill, and shall ensure the effective and efficient use of regional and local resources in all of the following:

(1) Traffic and crowd control.

(2) Firefighting.

(3) Boating traffic control.

(4) Radio and communications control and provision of access to equipment.

(5) Identification and use of available local and regional equipment or other resources suitable for use in cleanup and removal actions.

(6) Identification of private and volunteer resources or personnel with special or unique capabilities relating to marine oil spill cleanup and removal actions.

(7) Provision of medical emergency services.

(c) A coastal protection element which establishes the state standards for coastline protection. The administrator, in consultation with the State Interagency Oil Spill Committee, the Coast Guard and Navy, and the shipping industry, shall develop criteria for coastline protection. If appropriate, the administrator shall consult with representatives from the States of Alaska, Washington, and Oregon, the Province of British Columbia in Canada, and the Republic of Mexico. The criteria shall designate at least all of the following:

(1) Appropriate shipping lanes and navigational aids for tankers,

barges, and other commercial vessels to reduce the likelihood of collisions between tankers, barges, and other commercial vessels. Designated shipping lanes shall be located off the coastline at a distance sufficient to significantly reduce the likelihood that disabled vessels will run aground along the coast of the state.

(2) Ship position reporting and communications requirements.

(3) Required predeployment of protective equipment for sensitive environmental areas along the coastline.

(4) Required emergency response vessels which are capable of preventing disabled tankers from running aground.

(5) Required emergency response vessels which are capable of commencing oil cleanup operations before spilled oil can reach the shoreline.

(6) An expedited decisionmaking process for dispersant use in coastal waters. Prior to adoption of the process, the administrator shall ensure that a comprehensive testing program is carried out for any dispersant proposed for use in California marine waters. The testing program shall evaluate toxicity and effectiveness of the dispersants.

(7) Required rehabilitation facilities for wildlife injured by spilled oil.

(8) An assessment of how activities that usually require a permit from a state or local agency may be expedited or issued by the administrator in the event of an oil spill.

(d) An environmentally and ecologically sensitive areas element which shall require the administrator, in conjunction with appropriate local agencies, to prepare and distribute to facilities and local and state agencies, regional maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast. The maps shall designate those areas which have particularly high priority for protection against oil spills. The administrator shall specify protective requirements to be taken in the event of an oil spill for each environmentally and ecologically sensitive area.

(e) The administrator shall complete the marine oil spill contingency planning section by January 1, 1993. Any recommendations for action that cannot be financed or implemented pursuant to the existing authority of the administrator shall be reported to the Legislature along with recommendations for financing those actions.

(f) "Administrator," for purposes of this section, means the administrator appointed by the Governor pursuant to Section 8670.4.

SEC. 8. Section 8574.8 of the Government Code is amended and renumbered to read:

8574.17. (a) A state toxic disaster contingency plan established pursuant to this article shall provide for an integrated and effective state procedure to respond to the occurrence of toxic disasters within the state. The plan shall provide for specified state agencies to implement the plan, for interagency coordination of the training conducted by state agencies pursuant to the plan, and for on-scene

coordination of response actions.

Notwithstanding any provision of the plan, the authority for the management of the scene of an on-highway toxic spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs or in a local fire protection agency as provided by Section 2454 of the Vehicle Code. During the preparation of the toxic disaster contingency plan, the Office of Emergency Services shall adopt the recommendations of the Department of the California Highway Patrol in developing response and on-scene procedures for toxic disasters which occur upon the highways, based upon previous studies for such procedures, insofar as the procedures are not inconsistent with the overall plan for initial notification of toxic disasters by public agencies and for after-incident evaluation and reporting.

(b) The Office of Emergency Services shall establish a central notification and reporting system to facilitate operation of the state toxic disaster response procedures designated by the toxic disaster contingency plan.

SEC. 9. Section 8574.8 is added to the Government Code, to read:

8574.8. The administrator shall submit to the Governor and the Legislature the amended state oil spill contingency plan required, pursuant to Section 8574.7, by January 1, 1993. The administrator shall thereafter submit revised plans every three years.

SEC 10. Section 8574.9 of the Government Code is amended and renumbered to read:

8574.18. (a) For purposes of this article, a "toxic disaster" means an occurrence where toxic substances are dispersed in the environment in such a manner as to cause, or potentially cause, injury or death to a significant number of persons or significant harm to the natural environment, as determined by the implementing state agency, through direct or indirect contact with such toxic substances.

(b) The toxic disaster contingency plan shall provide a listing of the kinds of toxic substances which pose potential hazards to human health and the environment and which could be the subject of a toxic disaster.

For purposes of this article, "toxic substances" means, for highway transportation purposes, substances and materials designated as hazardous by the United States Department of Transportation for purposes of Parts 172, 173, and 177 of Title 49 of the Code of Federal Regulations.

SEC. 11. Section 8574.9 is added to the Government Code, to read:

8574.9. (a) The State Interagency Oil Spill Committee shall consist of all of the following persons:

(1) The administrator named by the Governor pursuant to Section 8670.4.

(2) The Chairpersons of the State Lands Commission and the

California Coastal Commission, or their designees.

(3) A designated representative from all of the following agencies:

(A) The Office of Emergency Services.

(B) The State Water Resources Control Board.

(C) The Department of Justice.

(D) The California Highway Patrol.

(E) The California National Guard.

(F) The Division of Oil and Gas in the Department of Conservation.

(G) The State Department of Health Services.

(H) The Department of Transportation.

(I) The Department of Parks and Recreation.

(J) The Department of Water Resources.

(K) The Department of Forestry and Fire Protection.

(L) The State Fire Marshal.

(M) The California regional water quality control boards (one representative).

(N) The Resources Agency.

(O) The Office of Environmental Affairs.

(P) The California Conservation Corps.

(b) The administrator shall be the chairperson of the committee. The administrator shall ensure that personnel serve as staff to the committee.

SEC. 11.5. Section 8574.10 is added to the Government Code, to read:

8574.10. (a) The Review Subcommittee of the State Interagency Oil Spill Committee is hereby established. As used in this chapter, "review subcommittee" means the Review Subcommittee of the State Interagency Oil Spill Committee. The Director of Fish and Game, who shall serve as chair of the review subcommittee, the executive officer of the State Lands Commission, the executive director of the California Coastal Commission, the State Oil and Gas Supervisor, and the executive director of the State Water Resources Control Board, or their designees, constitute the members of the review subcommittee. The administrator may serve as the designee of the Director of Fish and Game.

(b) All regulations and guidelines adopted pursuant to Chapter 7.4 (commencing with Section 8670.1) of this division, Division 7.8 (commencing with Section 8750 of the Public Resources Code), and amendments to the state oil spill contingency plan shall, prior to adoption, be submitted to the review subcommittee for review and comment.

(c) Within 60 days after receipt of regulations, guidelines, or amendments pursuant to subdivision (a), the review subcommittee shall review and submit comments to the submitting agency. A recommendation of a member of the review subcommittee shall be based on the standards of the Lempert-Keene-Seastrand Oil Spill Prevention and Response, and Removal Act (Chapter 7.4 (commencing with Section 8670.1)). This comment period may

overlap any other comment periods required by law or allowed by the administrator.

(d) The comments and recommendations of the review subcommittee shall not be binding on the submitting agency. Prior to adoption and within 30 days after receiving a response from the review subcommittee, the submitting agency shall respond in writing to the members of the review subcommittee concerning all of the findings and recommendations of the review subcommittee. The submitting agency may reject the recommendations of the review subcommittee only when the submitting agency determines that the action it chooses more fully complies with that act. Whenever the submitting agency departs from a finding or recommendation of the review subcommittee, the written response of the agency shall state its rationale for concluding that its action more effectively furthers the purposes of the act, as defined in Section 8670.1. Any public hearing that is required by this chapter or any other statute shall be held after the submitting agency has filed a response to the review subcommittee.

SEC. 12. Section 8574.11 of the Government Code is amended and renumbered to read:

8574.19. (a) The Legislature hereby finds and declares that, in order to protect the public health and safety and the environment, and to reduce personal injury and property loss resulting from the sudden release of hazardous substances into the environment, it is necessary to establish a single, coordinated, and standardized hazardous substances incident response training and education plan for firefighters and law enforcement, emergency rescue, and environmental health personnel. A standardized hazardous substances incident response training and education program is necessary to ensure a coordinated emergency response capability throughout the state, and to eliminate duplicative and inconsistent hazardous substances emergency response training and education programs.

(b) In enacting this article, the Legislature recognizes that it is necessary to designate a single state agency to be responsible for the development of minimum standards relative to course content and subject matter for training and education of hazardous substance incident response personnel in order to avoid duplication of effort and inconsistent applications of safety procedures and protocols. The Legislature does not intend, by enacting this article, to preempt or nullify any hazardous substance incident response procedures and protocols which take into account existing conditions peculiar to a locality or region.

(c) For purposes of this article, "program" means the California Hazardous Substances Incident Response Training and Education Program established pursuant to Section 8574.20.

SEC. 13. Section 8574.12 of the Government Code is amended and renumbered to read:

8574.20. Not later than 18 months after the effective date of this

article, the Office of Emergency Services shall establish and manage the California Hazardous Substances Incident Response Training and Education Program to provide approved classes in hazardous substance response, taught by trained instructors, and to certify students who have completed these classes. To carry out this program, the Office of Emergency Services shall do all of the following:

(a) Adopt regulations necessary to implement the program.

(b) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, the California Specialized Training Institute, and other educational institutions, as specified in Section 8574.21.

(c) Establish recommended minimum standards for training emergency response personnel and instructors, including, but not limited to, fire, police, and environmental health personnel.

(d) Make available a training and education program in the use of hazardous substances emergency rescue, safety, and monitoring equipment, on a voluntary basis, at the California Specialized Training Institute.

(e) Train and certify instructors at the California Specialized Training Institute according to standards and procedures developed by the curriculum development advisory committee, as specified in Section 8574.21.

(f) Approve classes, as meeting the requirements of the program, if the classes meet the curriculum developed by the Office of Emergency Services pursuant to Section 8574.21 and the instructor received training and certification at the California Specialized Training Institute, as specified in subdivision (e).

(g) Certify students who have successfully completed a class approved as meeting the requirements of the program.

(h) Review and revise, as necessary, the program.

(i) Establish and collect admission fees and other fees that may be necessary to be charged for advanced or specialized training given at the California Specialized Training Institute. These fees shall be used to offset costs incurred pursuant to this article.

SEC. 14. Section 8574.13 of the Government Code is amended and renumbered to read:

8574.21. (a) Not later than one year after the effective date of this article, the Office of Emergency Services shall develop the curriculum to be used in classes which meet the program requirements and shall adopt standards and procedures for training instructors at the California Specialized Training Institute.

(b) The curriculum for the training and education program established pursuant to this article shall include all of the following aspects of hazardous substance incident response actions:

(1) First responder training.

(2) On-scene manager training.

(3) Hazardous substance incident response training for management personnel.

(4) Hazardous materials specialist training that equals or exceeds the standards of the National Fire Protection Association.

(5) Environmental monitoring.

(6) Hazardous substance release investigations.

(7) Hazardous substance incident response activities at ports.

(c) The Office of Emergency Services shall establish a curriculum development advisory committee, which shall consist of a representative from each of the following agencies or organizations:

(1) The Office of Emergency Services.

(2) The Office of the State Fire Marshal.

(3) The State Department of Health Services.

(4) The Department of Fish and Game.

(5) The State Water Resources Control Board.

(6) The Department of the California Highway Patrol.

(7) The California Police Chiefs' Association.

(8) The California Fire Chiefs' Association.

(9) The Commission on Police Officer Standards and Training.

(10) The California District Attorneys' Association.

(11) The Department of Forestry and Fire Protection.

(12) The Emergency Medical Services Authority.

(13) The Department of Transportation.

(14) The Environmental Protection Agency.

(15) The Chemical Industry Council of California.

(16) The California Manufacturers Association.

(17) The California Conference of Local Health Officers.

(18) The University of California.

(19) The California State Fireman's Association.

(20) The California State University.

(21) The California Professional Firefighters.

(22) The California Association of Highway Patrolmen.

(23) The California State Police Association.

(d) The curriculum development advisory committee shall advise the Office of Emergency Services on the development of course curricula and the standards and procedures specified in subdivision (a). In advising the Office of Emergency Services, the committee shall do the following:

(1) Assist, and cooperate with, representatives of the Board of Governors of the California Community Colleges in developing the course curricula.

(2) Ensure that the curriculum developed pursuant to this section is accredited by the State Board of Fire Services.

(3) Define equivalent training and experience considered as meeting the initial training requirements as specified in subdivision (a) that existing employees might have already received from actual experience or formal education undertaken, and which would qualify as meeting the requirements established pursuant to this article.

(e) The representative from the Office of Emergency Services shall serve as the chairperson of the curriculum development

advisory committee.

(f) After the course curricula and standards are established pursuant to subdivision (a), the curriculum development advisory committee shall meet at least once each year to review the program and advise the Office of Emergency Services on any required revisions.

(g) The Office of Emergency Services shall make the curriculum development advisory committee a subcommittee of the Curriculum Advisory Board of the California Specialized Training Institute.

(h) This article does not affect the authority of the State Fire Marshal granted pursuant to Section 13142.4 or 13159 of the Health and Safety Code.

(i) Upon completion of instructor training and certification pursuant to subdivision (e) of Section 8574.20 by any employee of the Department of the California Highway Patrol, the Commissioner of the Department of the California Highway Patrol may deem any training programs taught by that employee to be equivalent to any training program meeting the requirements established pursuant to this article.

SEC. 15. Section 8574.14 of the Government Code is amended and renumbered to read:

8574.22. The Office of Emergency Services may hire professional and clerical staff pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2). However, any person employed pursuant to this section shall be employed only at the California Specialized Training Institute.

SEC. 16. Section 8574.15 of the Government Code is amended and renumbered to read:

8574.23. Not later than 18 months after the effective date of this article, the Office of Emergency Services shall submit a report to the Legislature concerning the implementation of this article, including the locations of any classes and any recommendations for future legislative or administrative action.

SEC. 17. Chapter 7.4 (commencing with Section 8670.1) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 7.4. OIL SPILL RESPONSE AND CONTINGENCY PLANNING

Article 1. General Provisions

8670.1. This chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of the Government Code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be known, and may be cited as, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

8670.2. The Legislature finds and declares as follows:

(a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the

marine waters of this state.

(b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.

(c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.

(f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.

(g) Improvements in the design, construction, and operation of tankers, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.

(h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(*l*) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) "Barges" means any relatively flat-bottomed, waterborne vessel that does not have a crew, is propelled by being pulled by another vessel, and that is constructed or adapted to carry oil in commercial quantities as cargo.

(c) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest

degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid

distillates from unprocessed natural gas.

(j) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(k) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge or oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(*l*) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(m) "Pipeline" means any pipeline used at any time to transport oil.

(n) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(o) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(p) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(q) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing

with Section 8574.1) of Chapter 7.

(r) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(s) "Vessel" means a tanker or barge as defined in this section.

8670.4. There shall be an administrator for oil spill response. The administrator shall be a chief deputy director of the Department of Fish and Game. The administrator shall be appointed by the Governor and shall serve at the pleasure of the Governor. The appointment by the Governor shall be subject to the advice and consent of the Senate. The compensation of the administrator shall be fixed by the Governor pursuant to law.

8670.5. The Governor shall ensure that the state fully and adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including emergency drills and preparedness and spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

Article 2. Duties of the Administrator

8670.6. (a) The administrator shall ensure that he or she has available for support, either under direct employment, elsewhere in state government, or through contract for private or governmental services, personnel who are fully trained and familiar with oil spill response, containment, and cleanup technologies, procedures, and operations, risk evaluation and management, and emergency systems safety.

(b) The administrator shall appoint a deputy administrator and an assistant deputy administrator to whom the administrator may delegate all or some responsibilities under this article.

(c) The administrator, consistent with applicable civil service laws, shall appoint and discharge any officer, house staff counsel, or employee of the administrator, as determined to be necessary, to carry out this article.

(d) The administrator, including staff and the costs of training and equipping the staff, shall be funded by the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

8670.7. (a) The administrator, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the state, in accordance with any applicable marine facility or vessel contingency plan and the state oil spill contingency plan. The administrator shall cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

(b) The administrator shall implement the state oil spill contingency plan, required pursuant to Section 8574.1, to the fullest

extent possible.

(c) The administrator shall do all of the following:

(1) The administrator shall be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) The administrator shall ensure that persons having training in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities which are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of dispersants and any oil spill cleanup agents in connection with an oil discharge, consistent with the regulations adopted pursuant to Section 13169 of the Water Code. The administrator shall consult with the federal on-scene coordinator prior to exercising authority under this subdivision.

(g) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of data and other evidence which may help in determining and recovering damages.

8670.8. (a) The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs. These programs may include training for members of the California Conservation Corps, other response personnel employed by the state, personnel employed by other public entities, personnel from marine facilities, commercial fishermen and other mariners, and interested members of the public. Training may be offered for volunteers.

(b) The administrator may offer training to anyone who is required to take part in response and cleanup efforts under the state oil spill contingency plan or under local governmental contingency plans prepared and approved under this chapter.

(c) Funding for activities undertaken pursuant to subdivisions (a) and (b) shall be from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(d) All training provided by the administrator shall follow the requirements of applicable federal and state occupational safety and

health standards adopted by the Occupational Safety and Health Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board.

8670.8.5. The administrator may use volunteer workers in response, containment, restoration, and cleanup efforts for oil spills in marine waters. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation pursuant to this section shall be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46.

8670.9. The administrator shall enter into discussions on behalf of the state with the States of Alaska, Oregon, and Washington, for the purpose of developing an interstate compact regarding oil transport by tanker or barge. The compact shall address all of the following:

(1) Coordination of vessel safety and traffic.

(2) Spill prevention equipment and response required on tankers and barges and at terminals.

(3) The availability of oil spill response and cleanup equipment and personnel.

(4) Other matters which may relate to the transport of oil and oil spill prevention, response, and cleanup.

The administrator shall coordinate the development of the interstate compact with the Coast Guard, the Province of British Columbia in Canada, and the Republic of Mexico.

8670.10. (a) In coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. All state and local entities and all operators of marine facilities and the operators of all vessels of any kind located in marine waters shall cooperate with the administrator in carrying out these drills.

(b) The administrator shall establish standards which all operators of vessels and marine facilities shall meet during the emergency drills carried out pursuant to subdivision (a). The administrator must establish a standard for the time allowable for adequate response. The standards shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist at a facility.

(c) The administrator shall issue a report after every drill which evaluates the performance of the participants.

8670.12. (a) The administrator shall conduct studies and evaluations necessary for improving oil spill response, containment,

and cleanup and oil spill wildlife rehabilitation in marine waters and marine oil transportation systems. The administrator may expend moneys from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, enter into consultation agreements, and acquire necessary equipment and services for the purpose of carrying out these studies and evaluations.

(b) The administrator shall study the use and effects of dispersants, incineration, bioremediation, and any other methods used to respond to a spill. The study shall periodically be updated to ensure the best achievable protection from the use of those methods. Based upon substantial evidence in the record, the administrator may determine in individual cases that best achievable protection is provided by establishing requirements which provide the greatest degree of protection achievable without imposing costs which significantly outweigh the incremental protection that would otherwise be provided. The studies shall do all of the following:

(1) Evaluate the effectiveness of dispersants and other chemical agents in oil spill response under varying environmental conditions.

(2) Evaluate potential adverse impacts on the environment and public health including, but not limited to, adverse toxic impacts on water quality, fisheries, and wildlife with consideration to bioaccumulation and synergistic impacts, and the potential for human exposure, including skin contact and consumption of contaminated seafood.

(3) Recommend appropriate uses and limitations on the use of dispersants and other chemical agents to ensure they are used only in situations where the administrator determines they are effective and safe.

(c) The administrator shall evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. The study shall examine the following:

(1) Equipment and technology needs.

(2) Coordination with private response personnel.

(3) Liability and insurance.

(4) Compensation.

(d) The studies shall be performed in conjunction with any studies performed by federal, state, and international entities. The administrator may enter into contracts for the studies.

8670.13. (a) The administrator shall report to the Legislature by December 31, 1992, on the feasibility of requiring new technologies to aid prevention, response, containment, and cleanup and wildlife rehabilitation. For the purposes of this section, "new technologies" shall include all of the following:

(1) Advanced electronic vessel location charts.

(2) Advanced shipboard oil and water separation systems.

(3) New designs for skimming vessels.

(4) Other new and emerging technologies.

(b) After submission of the report, the administrator shall review the rules, regulations, and policies required pursuant to Section

8670.28, for conformity with the recommendations of the report required by this section.

(c) The administrator shall include new technologies in the report pursuant to Section 8670.15.

8670.14. The administrator shall coordinate the oil spill prevention and response programs and marine facility, tanker, and barge safety standards of the state with federal programs to the maximum extent possible.

8670.15. Beginning December 31, 1991, and annually thereafter, the administrator shall report to the Governor and the Legislature on the adequacy of prevention and response programs. The report shall also include an evaluation of marine safety in marine waters of the state. The administrator shall also report on all research conducted pursuant to this chapter that has been completed or is currently in progress.

Article 3. Marine Safety

8670.16. The administrator shall take any action necessary and appropriate to promote the adoption of statutes or regulations by the federal government which establish all of the following requirements:

(a) Each tanker using ports in the state is required to have alarms on the bridge which give warning any time an attempt is made to control the tanker manually while the autopilot is engaged, whether the attempt is successful or not, or any time the autopilot fails.

(b) Each tanker using ports in the state is required to have in good working order, all of the following:

(1) Two "VHF" bridge-to-bridge radiotelephones.

(2) One single-side band radiotelephone.

(3) One satellite communication device.

(4) Two collision avoidance radar devices, at least one of which has automatic collision avoidance (ARPA) capability.

(c) Tankers and barges use only shipping lanes designed to significantly reduce the likelihood of oil spills reaching sensitive environmental areas, including, but not limited to, the Channel Islands, Big Sur, the Farallones Islands, and the North Coast.

8670.17. (a) The administrator shall adopt rules, regulations, and guidelines governing marine terminals regarding the equipment, personnel, and operation of vessels, to and from which the terminals may be used to transfer oil.

(b) All rules, regulations, and guidelines shall be promulgated, and thereafter modified periodically by the administrator, to ensure that the best achievable protection of the public health and safety and the environment is employed at all times.

(c) The regulations adopted pursuant to this section shall include, but not be limited to, all of the following:

(1) A requirement that all tankers have functional equipment which is compatible with any vessel traffic control system which may

be established along the California coast.

(2) A determination of the circumstances under which tankers shall be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees. If the administator adopts regulations which differ from the recommendations of the harbor safety committees, he or she shall do so only after a public hearing. Additionally, if the administrator adopts regulations which require the use of tug escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the harbor safety committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in public hearing, adopt findings, based on substantial evidence, that the requirement provides adequate protection and is consistent with the purposes of this chapter.

(3) A requirement that a tanker which is in marine waters has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.

The rules, regulations, and guidelines adopted pursuant to this subdivision shall be developed in a separate administrative process. The Legislature finds and declares that the appropriate use of tug escorts can improve tanker safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the rules, regulations, and guidelines concerning tug escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other rules, regulations, and guidelines required by this section.

8670.18. (a) The administrator may inspect or cause to be inspected on a regular basis all vessels.

(b) The administrator shall, by December 31, 1991, prepare a report to the Legislature which evaluates the adequacy of the vessel inspection programs conducted by the Coast Guard and any other federal, state, or local agency. The evaluation shall consider all of the following:

(1) The frequency and scope of inspections.

(2) The continuing commitment of the Coast Guard to conduct frequent vessel inspections.

(3) Any new or pending federal legislation that is likely to change the Coast Guard's inspection programs.

(4) Whether it is desirable for the state to contract with the Coast Guard for more frequent or expanded vessel inspections.

(5) Whether it is desirable and practical for the state to develop and implement a state vessel inspection program.

(c) If the administrator determines in the report that the Coast Guard inspection program is inadequate, the administrator shall attempt to enter into an agreement with the Coast Guard to remedy

the deficiencies.

(d) If, within a reasonable time, the administrator cannot remedy the deficiencies in the Coast Guard inspection programs, the administrator shall report to the Legislature concerning the steps the administrator is taking to ensure that an adequate vessel inspection program is in place. The administrator shall adopt regulations for any vessel inspection program established pursuant to this section. Vessel inspections authorized pursuant to this section shall be conducted only for the purposes of determining compliance with relevant federal law and the Oil Spill Prevention, Abatement, and Removal Act, as defined in Section 8670.1. The administrator shall consult with the Coast Guard regarding state-mandated requirements for vessel inspections. The inspection program shall be in operation by December 31, 1992. If the administrator cannot comply with this deadline, he or she shall report to the Legislature on the reasons.

(e) Any state vessel inspection program established pursuant to this section shall not duplicate the activities of the Coast Guard or other authorized federal agencies. The administrator shall maintain a record of these activities for each vessel inspected. Any violation of Coast Guard regulations shall immediately be reported to the Coast Guard.

8670.19. (a) Within one year of the adoption of regulations pursuant to Section 8670.28, the administrator shall conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:

(1) Segment the coast into appropriate areas as necessary.

(2) Evaluate the contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and other area determined to be necessary to ensure the best achievable protection of the coastline, set forth in the state oil spill contingency plan, including the marine oil spill contingency planning section.

(b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the coastline is protected.

8670.20. (a) Any party responsible for a tanker or barge shall notify the Coast Guard within one hour of the disability if the disabled tanker or barge is within 12 miles of the shore of the state. The administrator and the Office of Emergency Services shall request the Coast Guard to notify the Office of Emergency Services as soon as possible after the Coast Guard receives notice of a disabled tanker or barge within 12 miles of the shore of the state. The administrator shall attempt to negotiate an agreement with the Coast Guard governing procedures for Coast Guard notification to the state regarding disabled tankers.

(b) Whenever the Office of Emergency Services receives notice of a disabled tanker or barge, the office shall immediately notify the administrator. If the administrator receives notice from any other

source regarding the presence of a disabled tanker or barge within 12 miles of the shore of the state, the administrator shall immediately notify the Office of Emergency Services.

(c) For the purposes of this section, a tanker shall be considered disabled if any of the following occurs:

(1) Any accidental or intentional grounding which creates a hazard to the environment or the safety of the vessel.

(2) Loss of main propulsion or primary steering or any component or control system which causes a reduction in the maneuvering capabilities of the vessel. For the purposes of this paragraph, "loss" means that any system, component, part, subsystem, or control system does not perform the specified or required function.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including, but not limited to, fire, flooding, or collision with another vessel.

(4) Any occurrence not meeting the above criteria, but which creates the serious possibility of an oil spill or an occurrence which may result in an oil spill.

(d) For the purposes of this section, a barge shall be considered disabled if any of the following occur:

(1) The towing mechanism becomes disabled.

(2) The tugboat towing the barge becomes disabled through occurrences defined in subdivision (c).

8670.21. (a) The administrator shall attempt to negotiate an agreement with the Coast Guard by December 31, 1991, for a vessel traffic service system to protect the harbors of the state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors or negotiate a separate agreement. Any such separate agreement shall be negotiated by December 31, 1993. The purpose of the vessel traffic service and the vessel traffic monitoring and communications systems shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings.

(b) If the adminstrator cannot negotiate an agreement on VTS systems pursuant to subdivision (a) by December 31, 1991, the administrator shall, in consultation with the Coast Guard, develop a plan for implementing vessel traffic service systems pursuant to subdivision (a) for the harbors of Los Angeles/Long Beach, the harbors of San Fancisco, San Pablo and Suisun Bays, and the Santa Barbara Channel, and any other areas where establishing a vessel traffic service system or vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the regions described in this subdivision, and any other system and regions recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. The plan shall be completed by December 31, 1992. Only systems which will be operated by the Coast Guard shall be included in the plan. The system shall be installed and in operation by December 31, 1993 The

plan shall be amended to reflect changes in Coast Guard recommendations, operations, and changes in the agreements specified in subdivision (a). If the adminstrator cannot comply with this deadline, he or she shall report to the Legislature on the reasons. The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(c) The administrator shall attempt to provide funding for a VTS and vessel monitoring and communications system through voluntary funding by the maritime industry. If agreement on voluntary funding has not been reached by July 1, 1992, the administrator shall establish a revenue system that reflects the commercial maritime activity of each of the respective harbors or areas for which there is a VTS or vessel monitoring and communications system. Using this revenue system, the administrator shall fund the VTS system and vessel monitoring and communications system. The moneys collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. Moneys in the Vessel Safety Account are continuously appropriated solely to carry out the purposes of this section Other than the fees imposed by this subdivision, no funds from the Oil Spill Prevention and Administration Fund may be used to pay for VTS or vessel tracking monitoring and communication systems. The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting barges and tankers from accepting or unloading oil at marine terminals if a barge or tanker is not in compliance with required vessel traffic service and vessel traffic monitoring and communications system equipment.

(d) All other vessel traffic service and vessel traffic monitoring and communications systems deemed necessary by the administrator, but not approved by the Coast Guard, shall not be included in the plan until receiving specific approval by the Legislature.

(e) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(f) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard.

8670.22. Any vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990 shall be prohibited from docking, loading, or unloading at any marine terminal in the state.

8670.23. (a) The administrator shall create harbor safety committees for the harbors of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco, San Pablo, and Suisun Bays; and Humboldt Bay by July 1, 1991.

(b) The administrator shall appoint to each harbor safety committee for a term of three years all of the following members:

(1) A designee of each of the port authorities within the harbor, except that the harbor safety committee for the harbor of San Francisco, San Pablo, and Suisun Bays shall have four designees.

(2) A representative of tanker operators, except that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall have two representatives.

(3) A representative of the pilots organizations within the harbor.

(4) A representative of dry cargo vessel operators, except that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall have two representatives.

(5) A representative of commercial fishing or pleasure boat operators.

(6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.

(7) A representative of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall appoint a representative of the San Francisco Bay Conservation and Development Commission.

(8) A representative from a recognized labor organization involved with operations of vessels.

(9) A representative of the Captain of the Port, the Coast Guard, the Corps of Engineers, and the Navy to the extent each consents to participate on the committee.

(10) A representative of tug or barge operators, who is not also engaged in the business of operating either tankers or dry cargo vessels, except that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall have one representative of tug operators and one representative of barge operators, neither of whom shall also be engaged in the business of operating either tankers or dry cargo vessels.

Any members appointed from the categories listed in paragraphs (1), (2), (3), (4), (8), and (10) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

(A) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.

(B) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.

(C) Has held or is presently holding a shoreside position with direct operational control of vessels.

(D) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities.

The administrator shall appoint a chairperson for each harbor safety committee from the membership specified in this subdivision. Each member of a harbor safety committee shall be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

(c) Each harbor safety committee shall be responsible for planning for the safe navigation and operation of tankers, barges, and other vessels within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor. For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(d) The administrator shall adopt regulations and guidelines for harbor safety plans in consultation with the port authorities of the harbors listed in subdivision (a), and other affected parties. The regulations and guidelines shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee. With respect to harbor safety plans, the administrator shall give his or her highest priority to the development of regulations and guidelines concerning tug escorts as contained in paragraph (1) and shall expeditiously adopt that portion of the regulations and guidelines relating to tug escorts so that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays can expeditiously conform to the requirements of paragraph (1). The regulations and guidelines shall ensure that each plan includes all of the following:

(1) A recommendation determining when tankers must be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbor. The harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall give its highest priority to the adoption of tug escort recommendations and shall immediately adopt interim recommendations prior to the completion of the entire harbor safety plan. The administrator shall be guided by the recommendation of the harbor safety committees when adopting the regulations and guidelines pursuant to Section 8670.17. If pursuant to Section 8670.17 the administrator adopts regulations which differ from the recommendations of the harbor safety committees, he or she shall do so only after a public hearing. Additionally, if the administrator adopts regulations which would require the use of tug escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which had been recommended by the harbor safety committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the requirement provides adequate protection and is consistent with the purposes of this chapter.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

(A) Anchorage designations and sounding checks.

(B) Communications systems.

(C) Small vessel congestion in shipping channels.

(D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(6) A recommendation as to whether establishing or expanding VTS systems within the harbors is desirable.

(7) A recommendation for funding VTS systems and other projects.

(e) Each harbor safety plan shall be submitted to the administrator by December 31, 1991. The administrator shall review these for consistency with the regulations and guidelines and shall approve the plans or give reasons for their disapproval.

(f) Upon approving the plans, the administrator shall, in consultation with the port authorities listed in subdivision (a), implement the plan. The administrator shall adopt regulations necessary to implement the plan. When federal authority or action is required to implement the plan or the recommendations, the administrator shall petition the appropriate agency or Congress, as necessary.

(g) On or before July 1 of each year, each harbor safety committee shall report its findings and recommendations to the administrator concerning the safety of its harbor and any recommendations for improving tanker and barge safety in the harbor by amending the provisions of the harbor safety plan, or through other means.

8670.24. (a) The administrator shall evaluate all pilotage areas in the state by January 1, 1992. This evaluation must include all of the following:

(1) The effectiveness of the state licensing program.

(2) The policies and procedures for investigating pilot incidents by either the Coast Guard or the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

(3) The feasibility and desirability of applying a surcharge in addition to other fees for pilotage for the purposes of providing expanded pilot training.

(b) The administrator will contact the various pilotage groups, the Coast Guard, and the maritime industry as part of his or her evaluation process.

Article 4. Oil Spill Response

8670.25. Any person who, without regard to intent or negligence, causes or permits any oil to be discharged in or on the marine waters of the state shall immediately contain, cleanup, and remove the oil in the most effective manner which minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator.

8670.25.5. (a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine

waters shall report the discharge to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the designated representatives of the State Lands Commission, the California Coastal Commission, the regional water quality control board having jurisdiction over the location of the discharged oil, and any public agency which may be affected by the spill. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the Office of Emergency Services.

(c) The telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tanker in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the state oil spill contingency plan prepared pursuant to Section 8574.1.

8670.26. Any local or state agency responding to a spill of oil shall notify the Office of Emergency Services, if notification as required under Section 8670.25, Section 13272 of the Water Code, or any other notification procedure adopted in the state oil spill contingency plan has not occurred.

8670.27. (a) All parties responsible or potentially responsible for the discharged oil, the tanker, barge, or marine facility from which the oil was discharged, all of their agents and employees, the operators of all vessels docked at a marine facility which is a source of a discharge, and all state and local agencies shall carry out response and cleanup operations in accordance with applicable contingency plans, unless directed otherwise by the administrator or the Coast Guard. Except as provided in subdivision (b), the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at a marine facility which is the source of the discharge, and all state and local agencies shall carry out whatever direction is given by the administrator in connection with the response, containment, and cleanup of the spill, if the directions are not in direct conflict with the directions of the Coast Guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the administrator pursuant to subdivision (a) will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the administrator. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the administrator. The responsible party or potentially responsible party shall give the

administrator written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the administrator. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the administrator was justified under the circumstances.

Article 5. Contingency Planning

8670.28. (a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and state contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans to be prepared and implemented under this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee, and the Oil Spill Technical Advisory Committee, and shall be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The regulations and guidelines shall permit the development, application, and use of blanket contingency plans for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations and guidelines shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receives training in oil spill response and cleanup equipment usage and operations.

(4) Each contingency plan for a vessel or marine facility demonstrates that the marine facility or vessel has plans in place, including appropriate financial or contractual arrangements for all necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill

occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled tankers and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each marine facility identifies in its contingency plan the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a worst case oil spill.

(11) Each contingency plan includes a timetable for implementing the plan.

(b) The regulations and guidelines shall also include provisions for public review and comment on submitted contingency plans prior to approval.

(c) The regulations shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, regulations shall require that vessels engaged in lightering operations be boomed prior to the commencment of operations.

(d) The administrator shall ensure the rules, regulations, and guidelines are in effect not later than December 31, 1991.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Adminstrative Law review.

8670.28.5. An operator shall maintain a level of readiness that will allow effective implementation of the applicable contingency plans.

8670.29. (a) Every operator of a marine facility in the state shall, by July 31, 1991, prepare an interim marine facility oil spill contingency plan to assure that the marine facility will promptly and

adequately undertake emergency response and removal action in case of an oil spill. The marine facility contingency plan shall be effective upon approval by a qualified person and the facility management, as required in paragraph (1). The plans shall be upgraded to be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan pursuant to subdivision (c). The interim marine facility contingency plan shall meet all of the following requirements:

(1) Be a written document, specifically approved by a qualified person and the highest level of marine facility management. For the purposes of this section, "qualified person" means a person with specific training, knowledge, and experience in the area of oil spill prevention and response.

(2) Establish a specific chain of command and specify the overall responsibilities of employees, and supervisorial, contract, and volunteer personnel.

(3) Detail the procedures for reporting oil spills to local, state, and federal agencies.

(4) Detail the lines of communications between a marine facility and on-scene commanders, response teams, and local, state, and federal emergency and disaster responders.

(5) Provide for planning, including coordination with employees, outside contractors and volunteers, and local, state, and federal agencies.

(6) Provide for site security and control.

(7) Provide for emergency medical treatment and first aid.

(8) Provide for safety training as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.

(9) Detail site layout, topography, and ocean and other marine characteristics such as tide, prevailing sea condition, weather for different seasons, and locations of sensitive ecological areas requiring special protection.

(10) Detail the specific procedures for responding and undertaking removal actions for different size oil spills, up to and including the reasonable worst case oil spill which may occur at the marine facility, including the procedures for undertaking special protection of environmentally and ecologically sensitive areas. The plan shall encompass provisions for vessels which are expected to be in the operational control of the marine facility for loading or unloading.

(11) Provide for at least annual rehearsal, training, and drills on all of the elements of the plan, with emphasis on the specific procedures for responding and undertaking removal action.

(b) The contingency plan shall be reviewed periodically and upgraded as necessary to meet new or changing marine facility conditions.

(c) The plan shall be available to response personnel as well as relevant state and federal agencies for inspection and review.

(d) The administrator may request that the operator of a marine

facility submit the interim contingency plan for review of the administrator pursuant to Section 8670.30.5. The interim contingency plan shall be submitted within five working days of a request from the administrator.

8670.30. (a) On or before July 31, 1991, every vessel operating in the marine waters of the state shall submit to the administrator an interim vessel contingency plan which shall include at least all of the following elements:

(1) Proof of financial responsibility as provided by federal law. The State of California is to be named as an additional named insured on applicable insurance policies.

(2) A demonstration that the vessel operator is capable of providing timely and effective spill response and removal, directly, or through membership in, or contract with, private or public cooperatives or other organizations, consistent with the state contingency plan and not in conflict with the National Contingency Plan.

(3) Details of the procedures for reporting oil spills to state and federal agencies.

(b) Vessels entering the state after July 31, 1991, shall submit their vessel contingency plan to the administrator at least three days prior to entering state waters, and shall meet all the requirements of this section.

(c) For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

8670.30.5. (a) The administrator may review each submitted interim marine facility or vessel contingency plan to determine whether it complies with Sections 8670.29 and 8670.30.

(b) If the administrator finds the submitted contingency plan is deficient, the plan shall be returned to the operator with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives. The operator shall submit a new or modified plan within 90 days which responds to the deficiencies identified by the administrator.

8670.31. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, each operator of a vessel or a marine facility shall prepare and implement an oil spill contingency plan applicable to the vessel or marine facility. Blanket contingency plans for similar vessels and marine facilities may be used for this purpose.

(b) Each contingency plan required under this section shall be submitted to the administrator within 90 days after the effective date of the rules, regulations, and policies required under Section 8670.28.

(c) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations.

(d) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The

administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (e).

(e) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. Such a resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (d). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(f) Prior to considering a contingency plan for approval, the administrator may make an onsite inspection and require a drill of any contingency plan that is submitted.

(g) After the plan has been approved, it shall be resubmitted at least once every two years from the date of the initial approval. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

8670.33. (a) If the operator of a tanker or barge for which a contingency plan has not been approved desires to have the tanker or barge enter marine waters of the state, the administrator may give approval by telephone or facsimile machine for the entry of the tanker or barge into marine waters under an approved contingency plan applicable to a terminal or tanker, if all of the following are met:

(1) The terminal or tanker is the destination of the tanker or barge.

(2) The operator of the terminal or the tanker provides the administrator advance written assurance that the operator assumes all responsibility for the operations of the tanker or barge while it is in marine waters traveling to or from the terminal. The assurance may be delivered by hand or by mail or may be sent by facsimile machine, followed by delivery of the original.

(3) The approved terminal or tanker contingency plan includes all conditions the administrator requires for the operations of tankers

or barges traveling to and from the terminal.

(4) The tanker or barge and its operations meet all requirements of the contingency plan for the tanker or terminal that is the destination of the tanker or barge.

(5) The tanker or barge without an approved contingency plan has not entered marine waters more than once in the 12-month period preceding the request made under this section.

(b) At all times that a tanker or barge is in marine waters pursuant to subdivision (a), its operators and all their agents and employees shall operate the vessel in accordance with the applicable operations manual or, if there is an oil spill, in accordance with the directions of the administrator and the applicable contingency plan.

8670.34. This article shall not apply to any tanker or barge which enters marine waters of the state because of imminent danger to the lives of crew members or if entering marine waters of the state will substantially aid in preventing an oil spill or other harm to public safety or the environment, if the operators of the tanker or barge comply with all of the following:

(a) The operators or crew of the tanker or barge complies at all times with all orders and directions given by the administrator, or his or her designee, while the tanker or barge is in marine waters of the state, unless the orders or directions are contradicted by orders or directions of the Coast Guard.

(b) Except for fuel, oil may be transferred to or from the tanker or barge while it is in marine waters of the state only if permission is obtained for the transfer of oil and one of the following conditions is met:

(1) The transfer is necessary for the safety of the crew.

(2) The transfer is necessary to prevent harm to public safety or the environment.

(3) A contingency plan is approved or made applicable to the tanker or barge under subdivision (c).

(c) The tanker or barge shall leave marine waters of the state as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment, unless a contingency plan is approved or made applicable to it under this article.

8670.35. (a) Prior to January 1, 1992, the administrator, taking into consideration the state oil spill contingency plan, shall draft guidelines, standards, and formats regarding the adequacy of oil spill contingency plan elements of area plans required pursuant to Section 25503 of the Health and Safety Code. In developing the guidelines, the administrator shall consult with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(b) Any local government with jurisdiction over or directly adjacent to marine waters may apply for a grant to complete, update, or revise an oil spill contingency plan element.

(c) Each contingency plan element established under this section shall include provisions for training fire and police personnel in oil

spill response and cleanup equipment use and operations.

(d) Each contingency plan element prepared under this section shall be consistent with the local government's local coastal program as certified under Section 30500 of the Public Resources Code, the state oil spill contingency plan, and the National Contingency Plan.

(e) The administrator shall review and approve each contingency plan element established pursuant to this section. If, upon review, the administrator determines that the contingency plan element is inadequate, the administrator shall return it to the agency which prepared it, specifying the nature and extent of the inadequacies, and, if practicable, suggesting modifications. The local government agency shall submit a new or modified plan within 90 days after the plan was returned, responding to the findings and incorporating any suggested modifications.

(f) The administrator shall review the preparedness of local governments to determine whether a program of grants for completing oil spill contingency plan elements is desirable and should be continued. If the adminstrator determines that local government preparedness should be improved, the administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund for the purposes of this section.

8670.36. (a) The administrator shall, within five working days after receipt of a contingency plan prepared pursuant to Section 8670.28 or 8670.35, send a notice that the plan is available for review to the state agencies that comprise the membership of the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall send a copy of the plan within two working days after receiving a request from either committee. The State Lands Commission and the California Coastal Commission shall review the plans for facilities or local governments within the coastal zone. The San Francisco Bay Conservation and Development Commission shall review the plans for marine facilities or local governments within the area described in Sections 66610 and 29101 of the Public Resources Code. Any state agency or committee that comments shall submit its comments to the administrator within 60 days of receipt of the plan. The administrator shall consider all comments in approving or disapproving the plan.

(b) The State Interagency Oil Spill Committee may be reimbursed from the Oil Spill Prevention and Administration Fund for reasonable costs incurred in reviewing contingency plans and participating in public hearings on marine and vessel facility contingency plans.

8670.37. (a) The administrator, with the assistance of the State Lands Commission and the California Coastal Commission, shall carry out studies with regard to improvements to contingency planning and oil spill response equipment and operations.

(b) To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, and other appropriate state and international entities, and duplication

with the efforts of other entities shall be minimized.

(c) The administrator, the State Lands Commission, and the California Coastal Commission may be reimbursed for all costs incurred in carrying out the studies under this section from the Oil Spill Prevention and Administration Fund.

8670.37.5. (a) The administrator shall establish rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters.

(b) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the California Coastal Commission in the design, planning, construction, and operation of the rehabilitation stations. All proposals for the rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the state oil spill contingency plan, shall be consistent with the coastal protection element.

(c) (1) Five hundred thousand dollars ($500,000) of federal escrow funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. Sec. 1337(g)), shall, upon approval in the 1991–92 Budget Act, be appropriated or allocated for appropriation, as the case may be, from the Federal Trust Fund, each year for three years for the purposes described in subdivision (a).

(2) Additional funding shall be provided for the purposes described in subdivision (a) through the budget act process upon the request by the administrator.

Article 5.5. Financial Responsibility

8670.37.51. (a) No vessel may be used to transport oil across marine waters of the state unless the operator has obtained a certificate of financial responsibility issued by the administrator for the vessel or for the owner of all of the oil contained in and to be transferred to or from the vessel.

(b) No operator of a marine terminal within the state may transfer oil to or from a vessel unless the operator of the marine terminal has received a copy of a certificate of financial responsibility issued by the administrator for the operator of the vessel or for all of the oil contained in and to be transferred to or from the vessel.

(c) No operator of a marine terminal within the state may transfer oil to or from any vessel which is or is intended to be used for transporting oil as cargo to or from a second vessel unless the operator of the marine terminal has first received a copy of a certificate of financial responsibility issued by the administrator for the person responsible for both the first and second vessels or all of the oil contained in both vessels, as well as all the oil to be transferred

to or from both vessels.

(d) No person may operate a marine facility unless the owner or operator of the marine facility has first obtained a certificate of financial responsibility from the administrator for the marine facility.

(e) No vessel may be used to transport oil across marine waters of the state unless, at least 24 hours prior to the transport, the administrator has received both of the following:

(1) A copy of a certificate applicable to the vessel or to all of the oil in the vessel at all times during transport.

(2) A copy of a written statement by the holder of the applicable certificate authorizing its application to the vessel.

(f) This section shall become operative on January 1, 1992.

8670.37.52. The certificate of financial responsibility shall be conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, marine facility, or oil for purposes of determining liability pursuant to this chapter.

8670.37.53. In order to receive a certificate of financial responsibility, an applicant shall demonstrate to the satisfaction of the administrator all of the following:

(a) For a certificate for a vessel or for all of the oil contained within a vessel, the applicant shall demonstrate the financial ability to pay at least five hundred million dollars ($500,000,000) for any damages which may arise during the term of the certificate. The level of required financial responsibility shall increase to seven hundred fifty million dollars ($750,000,000) on July 1, 1995, and to one billion dollars ($1,000,000,000) on January 1, 2000. The administrator may establish a lower standard of financial responsibility for small barges. The standard shall be based on the quantity of oil that can be carried by the barge and the risk of spill from the barge into marine waters. The administrator shall not set a standard that is less than the expected costs from a reasonable worst case oil spill into marine waters.

(b) To receive a certificate for a marine facility, the applicant shall demonstrate the financial ability to pay for any damages which might arise during a reasonable worst case oil spill into marine waters that results from the operations of the marine facility. The administrator shall consider such criteria as the amount of oil that could be spilled into marine waters from the facility, the cost of cleaning up spilled oil, the frequency of operations at the facility, and the damages that could result from a spill.

The administrator may issue a certificate for a marine facility upon a lesser showing of financial resources for a period of not longer than three years if the administrator finds all of the following:

(1) The marine facility was operating on January 1, 1991.

(2) Continued operation is necessary to finance abandonment of the marine facility.

(3) The financial resources the operator is able to demonstrate are reasonably sufficient to cover the damages from foreseeable spills from the facility.

8670.37.54. (a) For the purposes of this chapter, financial responsibility may be demonstrated by evidence of insurance, surety bond, letter of credit, qualifications as a self-insurer, or any combination thereof or other evidence of financial responsibility.

(b) In adopting requirements under this article, the administrator may specify policy or other contractual terms, conditions, or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility, in order to effectuate the purposes of this article.

8670.37.55. (a) An owner or operator of more than one vessel or marine facility shall only be required to obtain one certificate of financial responsibility for all of the vessels and marine facilities owned or operated.

(b) If a person holds a certificate for more than one vessel or marine facility and a spill or spills occurs from one or more of those vessels or marine facilities for which the owner or operator may be liable for damages in an amount exceeding 5 percent of the financial resources reflected by the certificate, as determined by the administrator, the certificate shall immediately be considered inapplicable to any vessel or marine facility not associated with the spill. In that event, the owner or operator shall demonstrate to the satisfaction of the administrator the amount of financial ability required pursuant to this article, as well as the financial ability to pay all damages which arise or have arisen from the spill or spills which have occurred.

8670.37.56. If the administrator determines that, because of a spill outside of the state or some other action or potential liability, the holder of a certificate may not have the financial resources to pay damages for the spill or liability and have resources remaining available to meet the requirements of this chapter, the administrator may suspend the certificate.

8670.37.57. No certificate of financial responsibility shall have a term greater than two years. The administrator may issue certificates for shorter periods where appropriate.

Article 6. The Oil Spill Prevention and Administration Fund

8670.38. (a) The Oil Spill Prevention and Administration Fund is hereby created in the State Treasury. The money in the fund is available for appropriation by the Legislature and may only be used for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) For the purposes of this article, "fund" refers to the Oil Spill Prevention and Administration Fund.

8670.39. (a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out

and enforce this article.

8670.40. (a) The administrator shall collect annually a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The amount of the annual assessment shall not exceed four cents ($0.04) per barrel of oil.

(b) Every marine terminal operator shall pay the oil spill prevention and administration fee for each barrel of oil delivered through the operator's marine terminal. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of oil transported into the state by means of pipeline operating across, under, or through the marine waters of this state. The fee for a pipeline shall not be based on the number of times an individual pipeline enters and exits marine waters nor shall the fee be collected when oil is transported within a facility, such as between a tank facility and refinery or electric generating plant. The administrator shall develop regulations governing the fees to be assessed on pipelines.

The amount of the fee to be paid by an operator shall be established by the administrator commensurate with the risks and potential sizes of spills from the operator's marine facility.

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

(d) The State Board of Equalization shall collect the fee and adopt regulations for implementing the fee collection program.

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

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

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

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

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

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

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

Article 7. Oil Spill Response Trust Fund

8670.46. (a) The Oil Spill Response Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340, the money in

the fund is continuously appropriated to the administrator for expenditure, without regard to fiscal years, for the purposes of this article.

(b) For the purposes of this article, "fund" refers to the Oil Spill Response Trust Fund.

8670.47. (a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(c) The administrator is responsible for ensuring that there are adequate moneys available in the fund to carry out the purposes of this chapter.

8670.47.5. The following moneys shall be deposited into the fund:

(a) The fee required pursuant to Section 8670.48.

(b) Any federal funds received to pay for response, containment, abatement, and rehabilitation costs from an oil spill in marine waters.

(c) Any funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).

(d) Any interest earned on the moneys in the fund.

(e) Any cost recoveries from responsible parties pursuant to Section 8670.53.

8670.48. (a) Every marine terminal operator shall pay an oil spill response fee in the amount of twenty-five cents ($0.25) for each barrel of petroleum products received at a marine terminal within this state by means of vessel from a point of origin outside this state.

(b) Every operator of a pipeline shall also pay an oil spill response fee in the amount of twenty-five cents ($0.25) for each barrel of petroleum products transported into the state by means of pipeline.

(c) (1) Every operator of a refinery shall pay an oil spill response fee in the amount of twenty-five cents ($0.25) for each barrel of crude oil received at a refinery within this state.

(2) The fee shall not be imposed by a refiner or person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The State Board of Equalization shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, "independent crude oil producer" means any person or entity producing crude oil within this state who performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.

(d) Every marine terminal operator shall pay an oil spill response fee in the amount of twenty-five cents ($0.25) for each barrel of crude oil that is transported from within this state by means of marine vessel or barge to a destination outside this state.

(e) Every operator of a pipeline shall pay an oil spill response fee in the amount of twenty-five cents ($0.25) for each barrel of crude

oil transported out of the state.

(f) The fees required pursuant to this section shall be collected during any period that the fund contains less than the designated amount, as defined in subdivision (e), or during which the state has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1).

(g) For purposes of this chapter, "designated amount" means an amount equal to one hundred million dollars ($100,000,000), adjusted for inflation after January 1, 1991, according to an index which the administrator may reasonably choose, subject to the following:

(1) Fifty million dollars ($50,000,000) shall be retained in the fund as cash, adjusted for inflation.

(2) Fifty million dollars ($50,000,000) shall be immediately accessible in the fund in the form of financial security obtained by the Treasurer as authorized by subdivision (o).

(h) During any period in which the total amount in the fund exceeds the designated amount, and the moneys in the fund are not needed to pay for costs resulting from the spill of oil into marine waters or to retire any debt that the state assumed pursuant to Section 8670.53.15, the administrator shall provide refunds to each operator in proportion to the amount each operator paid into the fund.

(i) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

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

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To provide emergency loans and to cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (g) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the arrangement of fifty million dollars ($50,000,000) of financial security as authorized by subdivision (o).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(k) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount. If the fund exceeds the designated amount, the interest not needed to

bring the fund to the designated amount shall be deposited into the Oil Spill Prevention and Administration Fund.

(*l*) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the moneys in the fund shall be used solely for the purposes specified in subdivision (j).

(m) For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(n) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner or person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(o) The Treasurer shall purchase fifty million dollars ($50,000,000) of financial security which may be drawn upon immediately by the administrator upon making the determinations as required by Section 8670.49 The financial security shall be in a form as described in subdivision (a) of Section 8670.53.3.

8670.48.5. (a) The administrator may raise the fees specified in Section 8670.48 to a maximum of one dollar ($1) per barrel, provided that the fee may only be raised by maximum increments of twenty-five cents ($0.25) not more frequently than once every three months. The administrator shall raise the fee only upon making the following findings:

(1) A calamitous event, or series of events, has severely depleted or exhausted the fund.

(2) The Governor has requested the Treasurer to borrow the funds and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet the reasonably anticipated demands on the fund for authorized expenditures, including providing funds for the costs of response, containment, and cleanup of oil spills, damage assessment costs, wildlife rehabilitation, emergency loans, and damage claims.

(3) Failure to raise the fee in the amount proposed will result in unmet, or unpaid, authorized expenditures.

(b) At least 30 days prior to the day the increased fee shall be effective, the administrator shall inform the Legislature of his or her intent to raise the fee. The Legislature may reject the increase by statute.

(c) No single, incremental increase shall be effective for more than one year, unless renewed by the director before the expiration of the year upon making the findings required in subdivision (a). The administrator may establish an expiration date of less than one year.

(d) It is the intent of the Legislature that the fund shall not be used for any purpose other than those set forth in this chapter.

8670.49. (a) Except to pay for the arrangement of the financial security as authorized by paragraph (5) of subdivision (j) and

subdivision (o) of Section 8670.48, the administrator may expend money from the Oil Spill Response Trust Fund only after oil has been spilled into marine waters and the following determinations have been made:

(1) Except as authorized by Section 8670.51.1, a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spilling of oil into marine waters. The administrator shall make a reasonable effort to have the party responsible remove or agree to pay for any actions resulting from the spill of oil that may be required by law, provided that the efforts are not detrimental to fish, plant, animal, or bird life in the affected waters. The reasonable effort of the administrator shall include attempting to access the responsible parties' insurance or other proof of financial responsibility.

(2) Federal oil spill funds are not available or will not be available in an adequate period of time.

(b) Upon making the determinations specified in subdivision (a), the administrator shall immediately make whatever payments are necessary for responding to, containing, or cleaning up the oil spill, including any wildlife rehabilitation required by law and payment of claims pursuant to Sections 8670.51 and 8670.51.1.

8670.50. (a) Moneys from the fund may only be used to cover the costs incurred by the state and local governments and agencies for all of the following:

(1) Respond promptly to, contain, and clean up the discharge, provided those efforts are pursuant to the state and local oil spill contingency plans established under this chapter, the marine response element of the state oil spill contingency plan established under Article 3.5 (commencing with Section 8574.1) of Chapter 7, or those efforts are undertaken at the direction of the administrator.

(2) Meet the requirements of Section 8670.61.5, relating to wildlife rehabilitation.

(b) In the event of an oil spill, the administrator shall make whatever expenditures are necessary and appropriate from the fund to cover the costs described in subdivision (a).

8670.51. (a) When a person has obtained a final judgment for damages resulting from an oil spill in marine waters, but is unable, within one year after the date of its entry, to enforce the judgment pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure, or is unable to obtain satisfaction of the judgment from the federal government within 90 additional days, the administrator shall pay an amount not to exceed those amounts which cannot be recovered from a responsible party and the fund shall be subrogated to all rights, claims, and causes of action that the claimant has under this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, Section 8670.61.5, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) Any person may apply to the fund for compensation for

damages and losses suffered as a result of an oil spill in marine waters under any of the following conditions:

(1) The responsible party or parties cannot be ascertained.

(2) A responsible party is not liable for noneconomic damages caused by another.

(3) Subdivision (i) of Section 8670.56.6 is applicable to the claim.

(c) The administrator shall not approve any claim in an amount which exceeds the amount to which the person would otherwise be entitled pursuant to Section 8670.56.5, and shall pay claims from the fund which are approved pursuant to this section.

8670.51.1. (a) (1) Upon learning of an oil spill, the administrator shall immediately designate the responsible party, who, if that designation is not challenged, shall immediately, widely advertise the manner in which it shall accept and pay claims.

(2) If the designation of the administrator is challenged, the administrator shall immediately, widely advertise the manner in which he or she shall accept, process, and pay claims. If the administrator's designation is later upheld, all costs incurred by the administrator, including interest and appropriate penalties, shall be assessed against the responsible party.

(3) If the administrator is unable to designate a responsible party, the administrator shall immediately, widely advertise the manner in which the administrator shall accept, process, and pay claims. In the absence of a designated responsible party the claimant shall submit his or her claim to the federal fund. If there is no response within 60 days, the claimant may submit his or her claim to the fund.

(b) Claims under the amount of fifty thousand dollars ($50,000) may be submitted directly to the fund. The claimant shall not be required to make a demand on the responsible party or any federal fund. It is the intent of the Legislature that these claims be processed as expeditiously as possible, and the administrator shall contract with professional adjusters to handle the claims as fairly and professionally as possible. Claimants shall assign or subrogate all rights against the responsible party to the fund before payment and release.

(c) Claims in excess of the amount of fifty thousand dollars ($50,000) shall first be presented to the designated responsible party for payment. If a satisfactory response is not forthcoming within 60 days, the claimant shall submit his or her claim to the appropriate federal fund. If a satisfactory response is not forthcoming from the appropriate federal fund within 60 days, the claimant may submit the claim to the fund. If the administrator does not designate a responsible party, the claim shall be submitted directly to the appropriate federal fund.

(d) (1) If the federal fund completely rejects a claim, makes a partial offer, or the claimant rejects an offer, the claimant may, nevertheless, apply for reimbursement from the fund, provided that all evidence developed during the federal fund process shall be admissible during the processing of the claim. The administrator shall specifically consider any federal offer.

(2) Any federal payment shall be offset against any payment from the fund.

(3) The claimant shall assign or subrogate all rights under federal law to the fund. Any payment of claims from the fund shall require assignment or subrogation of the claimant's rights under state law to the fund.

(e) The administrator may levy fines against frivolous claims pursuant to Section 128.5 of the Code of Civil Procedure.

(f) Entities that pay into the fund shall have no standing to contest claims against the fund for claims less than one million dollars ($1,000,000). The entities may petition the director to have standing for claims between one million dollars ($1,000,000) and three million dollars ($3,000,000). The entities shall have standing for claims in excess of three million dollars ($3,000,000).

(g) An advisory committee comprised of entities that pay into the fund and other interested parties shall be created and the administrator shall consult with the committee on the manner in which payments are made from the fund.

(h) Claims for reimbursement from the fund within three years from the date the loss occurred.

(i) Dissatisfied claimants may sue the fund within six months of the administrator's final decision regarding a claim.

(j) The administrator shall develop and adopt regulations regarding the manner in which claims shall be submitted, processed, heard, and challenged.

(k) Punitive damages shall not be paid from the fund.

8670.52. In the event of an oil spill where more than 10,000 gallons of oil have been discharged in the marine waters, in any one day from a single event, the administrator, after a noticed public hearing, may make an emergency secured loan to any private individual or entity who demonstrates that the individual or entity may suffer substantial financial hardship as a result of the oil spill without such loans. However, loans under this section may be made only if the administrator determines that sufficient amounts are available in the fund to cover costs incurred by state and local governments and entities in responding to and cleaning up the spill. The administrator shall adopt any regulations and guidelines determined to be necessary regarding repayment terms, interest, security, and any other items the administrator deems appropriate.

8670.53. The Attorney General, in consultation with the administrator, shall undertake actions to recover all costs to the funds from any responsible party for an oil spill into marine waters for which expenditures are made from the fund. The recovery of costs pursuant to this section shall not foreclose the Attorney General from any other actions allowed by law.

Article 7.5. Borrowing Authority

8670.53.15. (a) At any time an oil spill into marine waters has occurred, and the administrator determines that the costs of responding to the spill are likely to exceed (1) the designated amount in the Oil Spill Response Trust Fund, and (2) the responsible party's financial ability, or there is no responsible party, the administrator shall notify the Governor. Upon notification, the Governor shall request that the federal government pay the costs for response, containment, cleanup, wildlife rehabilitation, and payment of damages. If federal funds are not available within five days, the Governor shall make a written request to the Treasurer to borrow and deposit in the fund the amount by which the estimated response costs exceed the designated amount.

(b) The Governor, the Controller, the Treasurer, and the administrator shall immediately take whatever action is necessary and appropriate to ensure that the state has the ability to borrow the maximum additional amount necessary to carry out this chapter.

(c) The party responsible for the spill shall be liable to the state for all money borrowed under this section, whether or not all or a portion of the borrowed money has been repaid through the oil spill response fee or by federal funds.

(d) No funds available pursuant to this article may be expended for any activities which result in a net environmental enhancement. It is the intent of the Legislature that borrowed funds be expended solely for oil spill response, containment, cleanup, wildlife rehabilitation, and damages resulting from oil spills.

8670.53.2. Money borrowed pursuant to this article shall be expended and repaid pursuant to Section 8670.48. So long as any borrowings are outstanding, fees and any other moneys in the fund, to the extent provided in the resolution of issuance, are pledged to the repayment of the borrowings. The pledge shall constitute a first lien and security interest, ratably with all other prior or subsequent borrowings unless the treasurer provides in a resolution of issuance, that any borrowing shall constitute a junior lien, which shall immediately attach on the fees deposited in the fund, and shall be effective, binding, and enforceable against the state and any other person asserting rights therein without need of any physical delivery, recordation, filing, or other action.

8670.53.3. (a) To provide funds to pay for costs of an oil spill, as set forth in Section 8670.48, in excess of moneys in the fund, the Treasurer shall make necessary financial arrangements to obtain the moneys needed to pay those cleanup costs, subject to reimbursement or repayment from future deposits into the fund. The financial arrangements may take the following forms, or any combination thereof:

(1) Establishment of a line of credit, letter of credit, or other standby arrangement with one or more financial institutions, hereafter referred to as a "standby arrangement," that will permit

the Treasurer to have ready access to moneys for the purposes of this article.

(2) Sale of bonds or notes of the state, hereafter referred to as "bonds," to provide funds for oil cleanup purposes, to repay any prior drawings on a standby arrangement, or to refund or extend any previously issued bonds.

(3) Borrowing from the Pooled Money Investment Account.

(4) Any other financial arrangement the Treasurer determines to be appropriate and cost-effective.

(b) The Treasurer may enter into any financial arrangement authorized in subdivision (a) at any time, or from time to time, on a negotiated or competitive bid basis, as the Treasurer shall determine to be advisable.

(c) The Governor shall deliver a written request to the Treasurer to obtain moneys pursuant to this article to pay for oil spill cleanup costs. The written request shall, to the extent feasible, state: (1) the amount of funds needed each month over the period covered by the request, and (2) the estimated income to the fund each month from all sources which will be available to pay or retire any debt service or other expenses in connection with obligations issued pursuant to this article. The Governor may submit multiple requests to the Treasurer with respect to the same oil spill, or with respect to different oil spills. On receipt of a written request pursuant to this section, the Treasurer may draw on a standby arrangement, use any other financial arrangement, or issue bonds, to provide funds not exceeding the amounts requested.

(d) The Treasurer shall ensure that funds will be available within five working days of receipt of a written request for funds by the Governor.

8670.53.4. (a) The entry into or issuance of any financial arrangement or bonds pursuant to this article shall be authorized by a resolution adopted by the Treasurer. Any financial arrangement or bonds (1) may be negotiable, (2) may be payable to order or to bearer, (3) may be in any denomination, (4) shall be payable not later than 20 years from the date of issuance, (5) may bear interest at a fixed or variable rate or rates to be determined as provided by the resolution and payable as provided therein, (6) may be payable on a fixed date or upon demand of the holder, (7) may be made subject to the prepayment or redemption at the option of the state or at the option of the holder, and (8) may contain such other terms as the Treasurer may determine to be necessary and appropriate.

(b) In connection with any financial arrangement or issuance of bonds pursuant to this article, the Treasurer may obtain or arrange for any insurance, letter of credit, or other credit enhancement or liquidity arrangements as the Treasurer determines to be appropriate and cost-effective, and may enter into any contracts or agreements for those arrangements not inconsistent with this article.

(c) Proceeds of the sale of any bonds or drawings on any standby arrangement or other financial arrangements shall be deposited in

the fund.

8670.53.5. Any financial arrangements made or issued pursuant to this article, and the repayment of any such obligations, shall be special obligations of the state secured solely by the moneys in the fund. No financial arrangement issued or made pursuant to this article shall be or become a lien, charge, or liability against the State of California or against its property or funds except to the extent of the pledges expressly made by this article. Every financial arrangement made pursuant to this article shall contain a recital stating that neither the payment of the principal thereof, nor any interest thereon, constitutes a debt, liability, or general obligation of the State of California other than as provided in this article, and neither the faith and credit nor the taxing power of the state are pledged to the repayment thereof.

8670.53.7. (a) All bonds issued pursuant to this article are legal investment for any of the following:

(1) Trust funds.

(2) Funds of insurers.

(3) Funds of savings and loan associations.

(4) Funds of banks.

(5) Funds of state agencies, cities, counties, cities and counties, or other public agencies or corporations.

(b) Bonds issued under this article are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of notes by banks as security for deposits of funds of the state and its agencies, or of any city, county, city and county, or other public agency or corporation.

8670.53.8. There is hereby appropriated from the fund, without regard to fiscal year, any and all moneys necessary to pay (1) principal, (2) interest, (3) premium, if any, (4) commitment, standby or availability fees, or charges in connection with any standby arrangement, other financial arrangement, or bonds issued pursuant to this article, or (5) any rebate penalty, or other payment necessary to maintain the federal tax-exempt status of any bonds or financial arrangement. The Treasurer shall advise the administrator and the Controller of amounts annually necessary to pay the principal, interest, premiums, and fees on obligations issued pursuant to this article, and those amounts shall not be available for expenditure for other purposes.

8670.53.9. Whenever the Treasurer determines that it will increase the marketability or reduce the cost of obtaining any standby arrangement, other arrangement, or of issuing any bonds to obtain, prior to or after sale, a legal opinion as to the validity of the standby arrangement, other arrangement, or bonds from attorneys other than the Attorney General, the Treasurer may obtain such a legal opinion.

8670.53.95. Section 10295 and Sections 10336 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into

by the Treasurer in connection with obtaining the financial arrangements authorized by this article.

Article 8. Oil Spill Technical Advisory Committee

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

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

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

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

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

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

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

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

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

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

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

8670.55. (a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

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

international entities. Duplication with the efforts of other entities shall be minimized.

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

(d) The committee shall report annually to the Governor and the Legislature on their evaluation of oil spill response and preparedness programs within the state annually and may prepare and send any additional reports they determine to be appropriate to the Governor and the Legislature.

8670.56. The administrator may expend from the Oil Spill Prevention and Administration Fund any amounts necessary for the purposes of carrying out this article.

Article 8.5. Damages

8670.56.5. (a) Any responsible party, as defined in subdivision (n) of Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of oil into or onto marine waters.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages which arise out of, or are caused by, a discharge which is authorized by a state or federal permit.

The defenses provided in this subdivision shall not be available to a responsible person who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(c) Upon motion and sufficient showing by a party deemed to be responsible under this section, the court shall join to the action any other party who may be responsible under this section.

(d) In determining whether a party is a responsible party under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the

results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(e) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(f) This section does not prohibit any person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(g) Damages for which responsible parties are liable under this section include the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs incurred pursuant to the state oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who

derives at least 25 percent of his or her earnings from the activities which utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in any action brought by the state, a county, city, or district.

(h) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(i) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or principle of law.

(j) Any payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against any royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(k) Any action which a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue any action on behalf of a private individual or entity which requests the state not to pursue that action.

(*l*) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

8670.56.6. (a) (1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), no person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, shall be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(2) The qualified immunity under this section shall not apply to any oil spill response action which is inconsistent with the directions of the Coast Guard, the director, or, in the absence of overriding directions of the Coast Guard or the director, is inconsistent with applicable contingency plans implemented under this division.

(3) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any person or persons responsible for the spill, for the discharged oil, or for the tanker, barge, terminal, pipeline, or facility from which the oil was discharged. The responsible person or persons shall remain liable for any and all damages arising from the discharge, including damages

arising from improperly carried out response efforts, as otherwise provided by law.

(b) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, for the discharged oil, or for the tanker, terminal, pipeline, or marine facility from which the oil was discharged.

(c) The responsible party or parties shall:

(1) Notwithstanding subdivision (b) or (h) of Section 8670.56.5, or any other provision of law, be strictly and jointly and severally liable for all damages arising pursuant to subdivision (g) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill cooperative of which it is a member or with which it has a contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.

(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).

(d) Nothing in this section shall immunize a cooperative or any other person from liability for acts of gross negligence or willful misconduct in connection with the cleanup of a spill.

(e) This section shall not apply to any action for personal injury or wrongful death.

(f) As used in this section, a "cooperative" means an organization of private persons which is established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or threatened spills of oil.

(g) Except for the responsible party, membership in a cooperative shall not, in and of itself, be grounds for liability resulting from cleanup activities of the cooperative.

(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.

(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall, in accordance with its terms, reimburse claims of any injured party for which a person who is granted immunity pursuant to this section would otherwise be liable.

(j) (1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who

are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in marine waters.

(2) In addition to the authority to negotiate contracts described in (1) above, the administrator shall also be authorized to negotiate and enter into indemnification agreements with qualified and financially responsible persons to respond to oil spills that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may, upon making all the following findings, extend the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated marine or land resources, (ii) threaten already contaminated marine or land resources with substantial additional contamination, or (iii) otherwise endanger the public safety or welfare.

(B) The remaining work is of such a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence

of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) No person or their agents, subcontractors, or employees shall incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to such response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of persons who are not regularly engaged in the business of responding to oil spills. Persons who are not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) persons who are primarily dedicated to the preservation and rehabilitation of wildlife and (B) persons who derive their livelihood primarily from fishing

(*l*) As used in this section, "response efforts" means rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

Article 9. Enforcement

8670.57. (a) When the administrator determines that any person has engaged in, is engaged in, or threatens to engage in, any acts or practices which constitute a violation of any provision of this chapter, Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any rule, regulation, permit, or order issued, promulgated, or executed thereunder, and when requested by the administrator, the district attorney of the county in which those acts occur or occurred, or the Attorney General, may make application to the superior court for an order enjoining the acts or practices, or for an order directing compliance. Upon a showing by the administrator that the person has engaged in, is engaged in, or threatens to engage in any violation of the act, a permanent or

preliminary injunction, restraining order, or other order may be granted.

(b) For the purposes of this section, "threaten" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

8670.58. Every civil action commenced pursuant to this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code at the request of the administrator shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same event, transaction, or occurrence may be joined or consolidated.

8670.59. Any civil action brought pursuant to this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code, shall be brought in the county in which the spill, discharge, or violation occurred, the county in which the principal place of business of the defendant is located, or the county in which the defendant is doing business in this state.

8670.61. The civil and criminal penalties provided in this chapter and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be separate and in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

8670.61.5. (a) For purposes of this chapter, "wildlife rehabilitation" means those actions that are necessary to fully mitigate for the damage caused to wildlife, fisheries, wildlife habitat, and fisheries habitat, including beaches, from the spill of oil into marine waters.

(b) Responsible parties shall fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. Full mitigation shall be provided by successfully carrying out environmental restoration projects or funding the activities of the Department of Fish and Game in carrying out environmental restoration projects complying with the requirements of this subdivision. Responsible parties are also liable for the costs incurred by the Department of Fish and Game in carrying out this section.

(c) If any significant wildlife rehabilitation is necessary as a result of a spill of oil into marine waters, the responsible party shall prepare and submit a wildlife rehabilitation plan to the Department of Fish and Game. The plan shall describe the actions that will be implemented to fully meet the requirements of subdivision (b), describe contingency measures which will be carried out in the event that any of the plan actions are not fully successful, provide a reasonable implementation schedule, describe the monitoring and compliance program, and provide a financing plan. The Department of Fish and Game shall review and determine whether to approve the plan within 60 days of submittal. Before approving a plan, the Department of Fish and Game shall first find that the

implementation of the plan will fully mitigate the adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. If the habitat contains beaches that are or were used for recreational purposes, the Department of Parks and Recreation shall review the plan and provide comments to the Department of Fish and Game.

(d) The plan shall place first priority on avoiding and minimizing any adverse impacts. For impacts that do occur, the plan shall provide for full onsite restoration of the damaged resource to the extent feasible. To the extent that full onsite restoration is not feasible, the plan shall provide for offsite in-kind mitigation to the extent feasible. To the extent that adverse impacts still have not been fully mitigated, the plan shall provide for the enhancement of other similar resources to the extent necessary to meet the requirements of subdivision (b). In evaluating whether a wildlife rehabilitation plan is adequate, the Department of Fish and Game may use the habitat evaluation procedures established by the United States Fish and Wildlife Service or any other reasonable methods as determined by the Director of Fish and Game.

(e) The Director of Fish and Game shall prepare regulations to implement this section. The regulations shall include deadlines for the submittal of plans. In establishing the deadlines, the director shall consider circumstances such as the size of the spill and the time needed to assess damage and mitigation. In all cases a plan shall be submitted within one year after the spill of oil.

8670.62. (a) Any person who discharges oil into marine waters, upon order of the administrator, shall do all of the following:

(1) Clean up the oil.

(2) Abate the effects of the discharge.

(3) In the case of a threatened discharge, take other necessary remedial action.

(b) Upon failure of any person to comply with a cleanup or abatement order, the Attorney General or a district attorney, at the request of the administrator, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(c) Consistent with the state contingency plan, the administrator may expend available money to perform any response, containment, cleanup, wildlife rehabilitation, or remedial work required pursuant to subdivision (a) which, in the administrator's judgment, is required by the circumstances or the urgency of prompt action required to prevent pollution, nuisance, or injury to the environment of the state. The action may be taken in default of, or in addition to, remedial work by the responsible party or other persons, and regardless of whether injunctive relief is sought. The administrator may perform the work in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated Notwithstanding any other

provisions of law, the administrator may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work. The contracts shall be exempt from approval by the Department of General Services pursuant to the provisions of Section 10295 of the Public Contract Code.

(d) If the discharge is cleaned up, or attempted to be cleaned up, the effects thereof abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharged the oil, or threatened to cause or permit the discharge of the oil within the meaning of subdivision (a), shall be liable to that governmental agency for the reasonable costs actually incurred in cleaning up that waste, abating the effects thereof, or taking other remedial action. The amount of the costs shall be recoverable in a civil action by, and paid to, the applicable governmental agency and the administrator, to the extent the administrator contributed to the cleanup costs from the Oil Spill Response Trust Fund or other available funds.

(e) If, despite reasonable effort by the administrator to identify the party responsible for the discharge of oil or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the administrator shall not be required to issue an order under this section. The absence of a responsible party shall not in any way limit the powers of the administrator under this section.

(f) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

8670.63. No provision of this chapter, or of Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any ruling of the administrator, shall be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the administrator, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any violation of this act, seek necessary remedial action by any person who violates any of the provisions of this act, or seek civil and criminal penalties against any person who violates any of the provisions of this act.

8670.64. (a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison.

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars ($2,500) or more than two hundred fifty thousand dollars ($250,000), 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 or in the county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000), or by both the fine and imprisonment:

(1) Fails to notify the Office of Emergency Services in violation of Section 8670.25.

(2) Continues operations for which contingency plans are required without a contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(3) Except as provided in Section 8670.27, knowingly fails to follow the material provisions of the applicable contingency plans.

8670.65. Except as otherwise provided in Section 8670.64, any person who knowingly violates any provision of this chapter, or Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this act is, upon conviction, guilty of a misdemeanor, punishable by a fine of not more than fifty thousand dollars ($50,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

8670.66. (a) Any person who intentionally or negligently does any of the following acts shall be subject to a civil penalty of not less than twenty-five thousand dollars ($25,000) or more than five hundred thousand dollars ($500,000) for each violation. Each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the

direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the U.S. Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Discharges or spills oil into marine waters, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this act or any permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this act shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.67 for the same act or failure to act.

8670.67. (a) Any person who intentionally or negligently does any of the following acts shall be subject to an administrative civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation as imposed by the administrator pursuant to Section 8670.68. Each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the applicable contingency plans or the direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the U.S. Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Discharges or spills oil into marine waters, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required by Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this act or any permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this act shall be liable for an administrative civil penalty as imposed by the administrator pursuant to Section 8670.68, not to exceed one hundred thousand dollars ($100,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section or for a civil penalty imposed pursuant to Section 8670.66 for the same act or failure to act.

8670.67.5. (a) Any person who without regard to intent or

negligence causes or permits oil to be discharged shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed ten dollars ($10) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the discharge of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in the amount of thirty dollars ($30) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(d) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

8670.68. (a) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 8670.67 or 8670.67.5. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 10 days after service of the complaint, request a hearing by filing with the administrator a notice of defense. A notice of defense is deemed to be filed within the 10-day period if it is postmarked within the 10-day period. If a hearing is requested by the respondent, it shall be conducted within 90 days after receipt of the notice of defense by the administrator. If no notice of defense is filed within 10 days after service of the complaint, the administrator shall issue an order setting liability in the amount proposed in the complaint unless the administrator and the party have entered into a settlement agreement, in which case the administrator shall issue an order setting liability in the amount specified in the settlement agreement. If the party has not filed a notice of defense or if the administrator and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, 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, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the

amount of civil penalty to be imposed.

(c) Orders setting civil liability issued pursuant to this section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance. Copies of the orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(d) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with a court of appeal a petition for writ of mandate for review of the decision. Any person who fails to file the petition within the 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 provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any 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 act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

8670.68.5. Twenty-five percent of any penalty collected under this article shall be paid to the agency or office prosecuting the action.

8670.69. Actions on behalf of the state or any other public entity to enforce Section 8670.61.5 through injunctive relief, declaratory relief, and all costs of the action, may be brought by any person in the public interest if both of the following occur:

(a) The action is commenced more than 60 days after the person has given notice of the violation which is the subject of the action to the Attorney General and the district attorney and city attorney in whose jurisdiction the violation is alleged to occur and to the alleged violator.

(b) No action has been commenced against the violation, or if commenced, is not being diligently prosecuted by the Attorney General, or any district attorney, city attorney or other prosecutor.

(c) This section applies to any actions brought with respect to any violations which have occurred, continue to occur or threaten to occur.

8670.69.4. (a) When the administrator determines that any person has undertaken, or is threatening to undertake, any activity or procedure that (1) requires a permit, certificate, approval, or authorization under this chapter, without securing a permit, or (2) is inconsistent with any of the permits, certificates, rules, regulations, guidelines, or authorizations, previously issued or adopted by the administrator, or (3) threatens to cause or substantially increases the risk of unauthorized discharge of oil into the marine waters of the

state, the administrator may issue an order requiring that person to cease and desist.

(b) Any cease and desist order issued by the administrator may be subject to such terms and conditions as the administrator may determine are necessary to ensure compliance with this division.

(c) Any cease and desist order issued by the administrator shall become null and void 90 days after issuance.

(d) A cease and desist order issued by the administrator shall be effective upon the issuance thereof, and copies shall be served immediately by certified mail upon the person or governmental agency being charged with the actual or threatened violation.

8670.69.6. Within 30 days after service of a copy of a cease and desist order issued by the administrator under Section 8670.69.4, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of an order of the administrator in any judicial proceeding brought to enforce the order or for other civil remedies.

Article 10. Environmental Enhancement Fund

8670.70. The Environmental Enhancement Fund is hereby created in the State Treasury. All penalties collected under Article 9 (commencing with Section 8670.57) shall be deposited into the Environmental Enhancement Fund, except as specified in Section 8670.64. The money in the fund shall only be used for environmental enhancement projects. The moneys shall not be used for the cleanup of an oil spill or the restoration required after an oil spill. The money is available for appropriation by the Legislature to the administrator for the purposes stated in this section.

8670.71. The administrator shall fund only those projects approved by the Environmental Enhancement Committee. All projects funded under this article shall be within or immediately adjacent to marine waters.

8670.72. The Environmental Enhancement Committee is hereby created. The committee shall consist of the following members:

(a) The administrator.

(b) A public member, to be appointed by the administrator, who shall be an officer or elected leader of a statewide nonprofit organization whose primary purpose is the protection and/or enhancement of natural resources.

(c) The executive officer of the State Coastal Conservancy, or his or her designee.

SEC. 18. Section 152 of the Harbors and Navigation Code is repealed.

SEC. 19. Division 7.8 (commencing with Section 8750) is added to the Public Resources Code, to read:

DIVISION 7.8. OIL SPILL PREVENTION AND RESPONSE

CHAPTER 1. GENERAL PROVISIONS

8750. Unless the context requires otherwise, the following definitions govern the construction of this division:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4 of the Government Code.

(b) "Barges" means any relatively flat-bottomed, waterborne vessel that does not have a crew and is propelled by being pulled by another vessel and that is constructed or adapted to carry oil in commercial quantities as cargo.

(c) "Best achievable protection" means the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critital need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Commission" means the State Lands Commission.

(f) "Local government" means any chartered or general law city, chartered or general law county or any city and county.

(g) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of

the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this division, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility."

(h) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(i) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Rivers and Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(j) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(k) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(*l*) "Operator" when used in connection with vessels, marine terminals, pipelines, or facilities, means any person or entity which owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of or uses that vessel, terminal, pipeline, or facility. "Operator" does not include any entity which owns the land underlying the facility or the facility itself, where the entity is not involved in the operations of the facility.

(m) "Person" means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(n) "Pipeline" means any pipeline used at any time to transport oil.

(o) "Responsible party" or "party responsible" means either of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility or a person or entity accepting responsibility for the vessel or marine facility.

(p) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil not authorized by any federal, state, or local government entity.

(q) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the

Government Code.

(r) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(s) "Vessel" means a tanker or barge as defined in this section.

8751. Notwithstanding any other provision of law, this division shall be applicable to all terminals, pipelines, facilities, vessels, and activities in the state, whether on lands that have been legislatively granted to local governments or on lands which remain ungranted.

CHAPTER 2. PREVENTION, INSPECTION, RESPONSE, CONTAINMENT, AND CLEANUP PROGRAMS

8752. No tanker or barge may use any marine facility in the state unless the tanker or barge is in compliance with all applicable federal and state laws and regulations governing equipment, personnel, construction, financial responsibility, and operations relating to the prevention of oil spills.

8753. All rules, regulations, and guidelines required pursuant to this chapter shall be adopted by January 1, 1992.

8754. The adminsitrator may prohibit an owner or operator of a marine terminal from delivering or accepting oil to or from any tanker or barge if the administrator finds, after noticed hearing, that the owner or operator has violated the laws and regulations of this chapter and that previous convictions, judgments, or settlements for those violations occurred during the prior three years and meet all of the following criteria:

(1) The violations have not been corrected or reasonable progress toward correction has not been achieved.

(2) The violations demonstrate a recurring pattern of noncompliance.

(3) The violations pose, or have posed, a significant risk to public health and safety or to the environment.

(b) The administrator shall not order the termination of operations pursuant to subdivision (a) if the decision to deny is based, in whole or in part, on violations that were resolved through a settlement, unless the administrator presents substantial evidence proving that the violations did occur and the applicant is then given the opportunity to rebut the evidence of the administrator.

(c) The administrator may allow terminals to resume transfers to and from the tankers or barges described if, after noticed hearing, the administrator is satisfied that the owner or operator has corrected all violations and will comply with all of the provisions of this division.

8755. (a) The administrator and the executive officer of the commission shall confer and propose, and the commission shall adopt rules, regulations, guidelines, and commission leasing policies for reviewing the location, type, character, performance standards, size, and operation of all existing and proposed marine terminals within

the state, whether or not on lands leased from the commission, and all other marine facilities on lands under lease from the commission to minimize the possibilities of a discharge of oil. Rules, regulations, and guidelines adopted by the commission shall not conflict with regulations of the administrator or the Coast Guard. The commission shall ensure that the rules, regulations, guidelines, and commission lease covenants provide the best achievable protection of public health and safety and the environment. Any rules, regulations, and guidelines governing the location of a marine terminal on lands under lease from a local government or port district shall not include provisions for review by the commission of any specific location, provided the location chosen or approved by the local government meets standards specified in the rules, regulations, and guidelines.

(b) This section shall not apply to any aboveground oil storage tank located entirely onshore which is subject to inspection programs and regulation under Chapter 6.67 (commencing with Section 25270) of Division 20 of the Health and Safety Code. This section shall include pipelines that are within or part of marine terminals. This section shall not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

(c) The commission shall consult with the administrator, the State Interagency Oil Spill Committee, and other affected local and federal agencies with respect to the rules, regulations, and guidelines. The consultation with the administrator shall ensure, at a minimum, consistency with the requirements for vessels that the administrator promulgates under Section 8670.17.

8756. The commission shall periodically review and accordingly modify its rules, regulations, guidelines, and commission leasing policies to ensure that all operators of marine terminals within the state and marine facilities under the commission's jurisdiction always provide the best achievable protection of the public health and safety, and the environment. This section shall not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

8757. (a) The commission shall inspect or cause to be inspected, on a regular basis, all marine facilities, along with associated equipment and shall monitor their operations and the effects on public health, safety, and the environment. These inspection and monitoring activities shall, to the greatest extent possible, be coordinated with federal, state, and local agencies having lawful jurisdiction. The commission shall maintain a record of these activities for each marine facility.

(b) Any such inspection conducted under this article shall be coordinated to the maximum extent with other state, federal, and local agencies. The commission is specifically encouraged to enter into agreements that would permit other agencies with existing inspection programs, including, but not limited to, the Division of Oil

and Gas, California Coastal Commission, and State Water Resources Control Board, to conduct the inspections required in this article This section does not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

8758. (a) Each operator of a marine facility shall prepare an operations manual describing equipment and procedures which the operator employs or will employ to protect public health and safety, and the environment and to prevent oil spills. The operations manual shall also describe equipment and procedures required for all vessels to or from which oil is transferred through use of the marine facility. The operations manual shall be submitted for approval to the commission.

(b) Every existing operator shall submit a manual within one year after the commission has adopted a program of rules, regulations, and guidelines as specified in this section.

(c) The commission shall approve the operations manual if the manual meets the governing rules, regulations, and guidelines adopted pursuant to subdivision (b). The commission shall deny approval of the operations manual if the commission finds the operations manual is not consistent with the rules, regulations, and guidelines. If the commission denies approval, it shall provide written reasons for its decision. The operator shall, within 90 days, submit a new manual responding to the reason for refusal and incorporating any suggested modifications.

(d) The operations manual shall be updated as necessary pursuant to the findings in the hazards and operability study or as when facility operations or technology change.

(e) The commission may require modification of the operations manual of any operator within its jurisdiction if the commission finds that the manual is no longer consistent with the rules, regulations, and guidelines adopted pursuant to subdivision (b).

(f) Once an operator's operations manual has been approved, all equipment and operations of the operator's marine facility shall be maintained or be carried out in accordance with the operations manual.

(g) All vessels docked at any marine facility in the state shall comply with the terms of the operations manual of the marine facility.

(h) The commission shall report to the administrator each marine facility whose operations manual is denied after the second submission. Failure to gain approval after the second submission may be determined by the administrator to be a violation of Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code. The administrator shall take any action he or she determines to be necessary.

(i) This section does not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal

law.

8759. The commission shall be reimbursed from the Oil Spill Prevention and Administration Fund for reasonable expenses undertaken under this division.

8760. The commission shall consult with the administrator, other state agencies, and agencies of the federal government, such as the United States Coast Guard and the Department of Transportation, to the maximum extent feasible, before undertaking actions pursuant to this division.

SEC. 20. Section 13272 of the Water Code is amended to read:

13272. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) such person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state oil spill contingency plan adopted pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code. This section shall not apply to spills of oil into marine waters as defined in subdivision (f) of Section 8670.3 of the Government Code.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each day of failure to notify, or imprisonment of not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state. This subdivision shall not apply to any person who is fined by the federal government for a failure to report a discharge of oil.

(d) Notification received pursuant to this section or information obtained by use of such notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) Immediate notification of an appropriate agency of the federal government of the discharge shall constitute compliance with the requirements of subdivision (a).

(f) Immediate notification of the appropriate regional board of the discharge, in accordance with reporting requirements set under Section 13267 or 13383, shall constitute compliance with the requirements of subdivision (a).

(g) The reportable quantity for oil or petroleum products shall be one barrel (42 gallons) or more, by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted subsequent to January 1, 1983.

SEC. 21. 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 or 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. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act 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.

(a) The sum of ten million fifty thousand dollars ($10,050,000) is hereby appropriated from the Oil Spill Prevention and Administration Fund to the administrator for the purposes of this act for expenditure as follows:

(1) The sum of five million one hundred thousand dollars ($5,100,000) for the purposes of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 2.4 (commencing with Section 8670.1) of Division 1 of the Title 2 of the Government Code), except for purposes of carrying out studies.

(2) The sum of three hundred thousand dollars ($300,000) for the purpose of studies under that act.

(3) The sum of one hundred fifty thousand dollars ($150,000) for the purposes of reimbursing the member agencies of the State Interagency Oil Spill Committee.

(4) The sum of five hundred thousand dollars ($500,000) for transfer to the Oil Spill Bond Expense Account which is hereby established in the Oil Spill Prevention and Administration Fund, to be available for paying expenses incurred by the Treasurer in providing for the preparation, sale, issuance, advertising, legal services, or any other act which, in the discretion of the Treasurer, is necessary to carry out the purposes of Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code. This account shall operate as a revolving fund and out of the first moneys available in the account, or whenever bonds are sold, out of the first money realized from their sale, any remaining expenses shall be paid, and there shall thereafter be redeposited in the account any amounts that have been expended for the above purposes, which amounts may be used for the same purposes and repaid in the same

manner whenever additional sales are made.

(5) The sum of one million dollars ($1,000,000) for grants to local governments for preparation of oil spill contingency plan elements of the hazardous materials plan. No grant to an individual local government may be larger than fifty thousand dollars ($50,000).

(6) The sum of three million dollars ($3,000,000) for the purposes described in Section 8670.37.5.

(b) The sum of one million six hundred thousand dollars ($1,600,000) is hereby appropriated from the Oil Spill Prevention and Administration Fund to the State Lands Commission for the purposes of implementing Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(c) The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated from the Oil Spill Prevention and Administration Fund to the State Board of Equalization for collecting the fees created in the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

(d) It is the intent of the Legislature that, at a minimum, the same level of funding shall be appropriated for the purposes of this act in the 1991–92 Budget Act.

SEC. 24. The fee created pursuant to Section 8670.48 of the Government Code shall not become operative if the proposed initiative measure known as "The Environmental Protection Act" is approved by the voters at the November 6, 1990, general election. If the State Lands Commission determines, pursuant to subdivision (d) of Section 6232 of the Public Resources Code as proposed by "The Environmental Protection Act," that federal or state law provides the required level of protection and determines not to collect the fee required pursuant to Section 6232 of the Public Resources Code as proposed by "The Environment Protection Act," the fee imposed pursuant to Section 8670.48 shall become operative.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the oil spill prevention and response provisions of this act be implemented at the earliest possible time and thereby provide urgently needed protection for the waters of California, it is necessary that this act take effect immediately.

CHAPTER 1249

An act to amend Section 12031 of, and to add Section 12025.5 to, the Penal Code, relating to firearms.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 24, 1990.]

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

SECTION 1. Section 12025.5 is added to the Penal Code, to read:

12025.5. A violation of Section 12025 is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This section may not apply when the circumstances involve a reciprocal restraining order issued pursuant to Section 4359 of the Civil Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating Section 12025, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

SEC. 2. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency from which the officer has retired.

Any officer retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm. The endorsement shall also include the date when the endorsement is to be renewed.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it has a "CCW Approved" stamp on it, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have a "CCW Approved" stamp until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of concealable weapons by persons who are

authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age nor more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental

agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (A) if hired prior to January 1, 1977; or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment. Security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for

the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a reciprocal restraining order issued pursuant to Section 4359 of the Civil Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

CHAPTER 1250

An act to add and repeal Chapter 6.2 (commencing with Section 18358) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

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

(a) There is a need for the treatment of severely emotionally disturbed children between 6 years of age and 14 years of age who are currently placed in intensive, highly structured residential group homes in a family-based setting, to enable them to make the transition from an intensive, highly-structured residential treatment setting to permanent family reunification, adoption, long-term foster care placement, or other less restrictive settings.

(b) While children placed in residential treatment programs often make substantial progress during their period of treatment in the program, followup studies of children discharged from intensive residential treatment indicate that many of them experience multiple placement failures and, therefore, may be destined for placement in some form of institutional care.

SEC. 2. It is the intent of the Legislature to authorize the development of an intensive treatment foster care program which will more successfully provide for the transition of children from residential programs to more permanent, noninstitutional placements by synthesizing aspects of residental treatment programs with features of foster care, and thereby providing multiproblem children with cost-effective and clinically effective treatment in a family-based environment.

SEC. 3. Chapter 6.2 (commencing with Section 18358) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 6.2. INTENSIVE FOSTER CARE PROGRAMS

18358. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise:

(a) "Department" means the State Department of Social Services.

(b) "Eligible children" means all of the following:

(1) Children who are emotionally disturbed, as evidenced by a history which may include, but is not limited to, all of the specific behavior management problems:

(A) Lying.

(B) Stealing.

(C) Verbal or physical aggression.

(D) Unacceptable sexual behavior.

(E) Attempts at self-mutilation or suicide.

(F) Defiant and oppositional behavior.

(2) Children who, as a result of their emotional disturbance are placed in a group home with a rate classification level of 12 or higher pursuant to Section 11462.

(3) Children who have successfully completed the group home program.

(4) Children who have been adjudicated a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code.

18358.05. (a) The department shall implement intensive treatment foster care programs for eligible children.

(b) (1) The department shall implement the programs in the Counties of Alameda and Yolo, pursuant to the concurrence of the board of supervisors of each participating county and subject to the availability of a foster family agency within the county which can provide the services required by this chapter.

(2) The program shall be limited to one foster family agency in each county. Each foster family agency shall serve a maximum of 20 children under this program during its first year of implementation and no more than 20 additional children per year in each successive year of the program's operation.

(c) As a condition of participating in this program, each foster family agency shall meet all of the following criteria:

(1) It has a program component with a rate classification level of 12 or higher pursuant to Section 11462.

(2) It has either of the following:

(A) Access to a nonpublic school program which provides mental health treatment.

(B) A contract with the county for the provision of mental health treatment for children.

(3) It provides, or arranges for the provision of, all additional services required under this chapter.

18358.10. Each foster family agency participating in this program shall provide all of the following personnel and administrative and support services:

(a) (1) Special attention to the selection and training of foster parents.

(2) All participating foster parents shall be provided with at least 60 hours of training in the care of emotionally disturbed children and 12 hours of ongoing in-service training per year. Training shall include, but not be limited to, working with abused and neglected children, progressive crisis intervention, and cardiopulmonary resuscitation. All training shall be completed prior to the child's placement in the home.

(3) Foster parents shall be provided with all necessary support services.

(b) Caseloads for participating group home social work case managers that do not exceed eight children.

(c) Therapists for the provision of therapy to the child, the biological parents of the child, and the foster parents of the child.

(d) The specific assignment to each certified family home of a trained child/youth counselor with experience in residential treatment.

(1) The child/youth counselor shall have one of the following:

(A) A bachelor's degree in a social science related field and at least one year's experience in working with emotionally disturbed children in institutional settings.

(B) An associate degree in a social science related field and have at least one year's experience in working with emotionally disturbed children in institutional settings.

(2) Each participating foster family agency shall provide each child/youth counselor with 60 hours of training to include, but not be limited to, working with abused and neglected children, progressive crisis intervention, cardiopulmonary resuscitation, and developing treatment plans for emotionally disturbed children. All training shall be completed prior to placing a child in a certified family home for which the child/youth counselor is assigned responsibility.

(3) Each child/youth counselor shall do all of the following:

(A) Provide up to forty hours per child per week of in-home supportive service to the child and the foster family. This service shall include, but not be limited to, structuring a safe environment for the child and implementing a needs and services plan.

(B) Arrange for coordination services with local education agencies and the service provider's nonpublic school, where applicable.

(e) A 24-hour oncall administrator who is available to respond to emergency situations.

18358.15. (a) Each foster family agency participating in the program shall provide or arrange for all the following services for children placed in foster care:

(1) Individualized case plans which ensure continuity and stability in the placement of emotionally disturbed children in certified family homes which meet the needs of children in making

the transition from institutional placement to noninstitutional placement.

(2) Education and mental health services for children.

(3) Therapeutic after-school programs for children.

(4) In-home and support services necessary to implement the case plan.

(5) Other necessary services for children in placement, including medical and dental services.

(b) No more than one emotionally disturbed child shall be placed in a certified family home unless the participating foster family agency provides the county welfare department with a written assessment of the risk and compatibility of placing two emotionally disturbed children together. However, there shall be no more than a total of five children living in a certified family home with two adults, and there shall be no more than a total of three children living in a certified family home with one adult, except in cases where children living in the home other than those placed pursuant to this chapter are 15 years of age or older.

(c) Any use of physical contact to manage the behavior of a child which is reported to the foster family agency pursuant to Section 18538.25 shall in turn be reported by the foster family agency to the Community Care Licensing Division of the department as a special incident pursuant to Section 80061 of Title 22 of the California Code of Regulations.

18358.2. County welfare departments in participating counties shall do all of the following:

(1) Determine the placement of eligible children in intensive foster care programs. Placement decisions shall also be reviewed by the participating county's existing interagency review team.

(2) Provide routine case management services.

(3) Monitor the implementation of the case plan for the child

18358.25. (a) Certified foster parents participating under this chapter shall ensure the well-being of emotionally disturbed children under their care. This care includes, but is not limited to, all of the following:

(1) Participation in initial and ongoing in-service training and demonstration pursuant to Section 18358.1 and demonstration of an understanding of and ability to meet the needs of emotionally disturbed children.

(2) Participation in the implementation of the individual case plan and the needs and in the development and implementation of the services plan for the child.

(3) Ensuring that the child's medical and dental needs are met.

(b) To the extent possible, certified foster parents selected under this chapter shall have a background in special education, psychological counseling, nursing, or child development.

(c) (1) All certified foster parents selected to participate in this program shall rent, lease, or own their own homes which shall be certified by the foster family agency.

(2) The home of certified foster parents shall be within reasonably close proximity to the participating foster family agency or a satellite location of the agency.

(d) (1) All certified foster parents shall report any special incident in accordance pursuant to Section 80061 of Title 22 of the California Code of Regulations. Additionally, any use of physical contact to manage the behavior of a child shall be reported as a special incident.

(2) Certified foster parents shall report incidents to the participating foster family agency, which shall report the incidents to the Community Care Licensing Division of the department pursuant to Section 18358.15.

18358.30. (a) Rates for foster family agency programs participating under this chapter shall be exempt from the current AFDC-FC foster family agency rate setting system.

(b) Rates for foster family agency programs participating under this chapter shall be set according to the appropriate pilot classification model based on the level of services provided to the eligible child and the certified foster family. In all of the pilot classification models, the foster family agency programs shall:

(1) Provide social work services with case loads not to exceed eight children per worker, except that social worker case loads for children in Pilot Classification Model F shall not exceed 12 children per worker.

(2) Pay an amount of one thousand two hundred dollars ($1,200) per child per month to the certified foster parent or parents.

(3) Perform activities necessary for the administration of the programs, including, but not limited to, training, recruitment, certification, and monitoring of the certified foster parents.

(4) Provide a minimum average of service per week by the in-home support counselor to the eligible child and the certified foster parents depending on the needs of the child and according to the following schedule:

Pilot Classification Model	In-Home Child/Youth Counselor Hours Per Week
A	31 hours
B	25 hours
C	18 hours
D	12 hours
E	6 hours
F	0 hours

(c) The department or placing county, or both, may review the level of services provided by the foster family agency program. If the level of services actually provided are less than those for the pilot classification model upon which the rate for the child was based, the rate shall be adjusted to reflect the pilot classification model actually

provided, and an overpayment may be established and recovered by the department.

(d) (1) The standard rate schedule of pilot classification models for the 1990–91 fiscal year shall be:

Pilot Classification Model	Fiscal Year 1990–91 Standard Rate
A	$3539
B	$3245
C	$2950
D	$2656
E	$2360
F	$1990

(2) For the 1991–92 and 1992–93 fiscal years, the standardized rate for each pilot classification model shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453.

(3) Beginning with the 1993–94 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the California Necessities Index computed pursuant to Section 11453, subject to the availability of funds.

(e) Rates for foster family agency programs participating under this chapter shall not exceed Pilot Classification Model A in the first six months of the eligible child's placement. At the end of the first six months, there shall be a decrease of at least one rate classification level. Thereafter, the pilot classification model shall decrease not less than one pilot classification model every six months of the eligible child's placement until Pilot Classification Model F is attained.

(f) It is the intent of the Legislature that the pilot classification model and the rate paid to participating foster family agency programs shall decrease as the child's need for services from the foster family agency decreases. The foster family agency shall notify the placing county and the department of the reduced services and the pilot classification model, and the rate shall be reduced accordingly.

(g) It is the intent of the Legislature to prohibit any duplication of public funding. Therefore, social worker services, payments to certified foster parents, administrative activities, and the services of in-home support counselors that are funded by another public source shall not be counted in determining whether the foster family agency program has met its obligations to provide the items listed in paragraphs (1), (2), (3), and (4) of subdivision (b).

18358.35. Foster family agencies implementing intensive foster care programs shall under no circumstances have any interest in the properties occupied by the certified foster parents.

18358.40. (a) (1) As a condition of participating pursuant to this chapter, foster family agencies shall fund or secure funding for an

independent evaluation conducted by an independent entity.

(2) The evaluation required by paragraph (1) shall include, but not be limited to, measurements of all of the following elements:

(A) Placement failure and recidivism rates.

(B) Success criteria and outcome measures, including stability in placement measured one year after the child's initial placement and at the end of the 5-year period authorized by this chapter.

(C) Net savings or estimated cost avoidance. The evaluation instrument shall utilize a control group.

(b) The city conducting the evaluation, the evaluation plan, and the evaluation criteria shall be subject to review and approval by the department and by the Department of Finance.

(c) The city conducting the evaluation shall submit an interim report to the department and the Department of Finance by December 31, 1994, and shall submit a final report to the department and the Department of Finance by December 31, 1995.

(d) Expansion of the program to other counties shall be subject to the approval of the department and the Department of Finance on a county-by-county basis.

18358.50. This chapter shall remain operative only until June 30, 1995, and 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.

CHAPTER 1251

An act to amend Section 20203 of, and to add Sections 20024.002 and 22825.01 to, the Government Code, relating to the Public Employees' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. The Department of Finance, in conjunction with the Public Employees' Retirement System, shall review the organization of state government to determine the appropriate organizational location for the system and shall submit a report to the Legislature on or before June 30, 1991.

SEC. 2. Section 20024.002 is added to the Government Code, to read:

20024.002. Notwithstanding Section 20024.01, "final compensation" for the purposes of determining any pension or benefit with respect to a state member who retires or dies on and after July 1, 1991, means the highest annual compensation which was earnable by the state member during any consecutive 12-month

period during his or her membership in the system or which is designated by the application for retirement.

SEC. 3. Section 20203 of the Government Code is amended to read:

20203. Interest earned on any cash deposit in a bank by the Treasurer and income on other assets constituting a part of the fund shall be credited to the fund as received. Income, of whatever nature, earned on the Retirement Fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, court-mandated costs, and actuarial losses resulting from terminations, mergers, and dissolutions of contracting agencies.

Unless specifically authorized by this part, no funds in the reserve against deficiencies shall be available for the payment of benefits. The board, however, may apply to reduce the book value of securities purchased all or part of the excess of the proceeds of the sale or the redemption prior to maturity of securities over the book value of the securities sold (a) if the purchase of securities is made with those proceeds and (b) if the terms of both securities from the date of sale, redemption prior to maturity, or purchase, as the case may be, to the respective dates of maturity do not differ by more than five years. All applications of these excess proceeds, even with greater differences in terms, heretofore made by the board are hereby validated and confirmed. .

At the end of each fiscal year, the amount in the reserve against deficiencies which exceeds 0.20 percent of the total assets of the system shall be credited to other accounts as prescribed by this part.

SEC. 4. Section 22825.01 is added to the Government Code, to read:

22825.01. Notwithstanding Section 22825.1 or any other provision of law, a total amount not to exceed thirteen million dollars ($13,000,000) from all funds is hereby appropriated to augment Items 9650-001-001, 9800-001-001, 9800-001-494, and 9800-001-988 of Section 2 of the Budget Act of 1990, as determined by the Director of Finance, and may be expended to provide, on an equitable pro rata basis, an increased state employer health benefit contribution for the 1990–91 fiscal year, which is chargeable to an appropriation made in the Budget Act of 1990, with respect to state officers, employees, and annuitants identified by the board who live where there is no available health maintenance organization and a fee-for-service health plan is the only option. That amount is appropriated for that purpose from all funds to augment equivalent items in the Budget Act of 1991 for the 1991–92 fiscal year and in the Budget Act of 1992 for the 1992–93 fiscal year, as determined by the Director of Finance.

SEC. 5. It is the intent of the Legislature in enacting Section 3 of this act, which reduces the maximum allowable funding level required in the reserve against deficiencies in the Public Employees' Retirement Fund, that the Investment Dividend Disbursement

Account, the Purchasing Power Account, and retired members reserves be protected against any adverse financial impact as a result of the administrative implementation of Chapter 463 of the Statutes of 1990.

SEC. 6. (a) This act shall become operative on and after the date the Board of Administration of the Public Employees' Retirement System has adopted the provisions of Chapter 463 of the Statutes of 1990 by: (1) adopting an amortization period of 40 years for any unfunded actuarial liability for the benefits applicable to all state membership categories; (2) reducing the state's contribution to the retirement fund by an amount equal to the state's pro rata share, based upon the total assets of the system, in the reserve against deficiencies established by Section 20203 of the Government Code; (3) certifying to the Controller at the end of each quarter the total amount of compensation in respect to which state contributions are payable from the General Fund and each other fund in the State Treasury, and (4) reduces the employer contribution to reflect actuarial experience which is better than the board adopted actuarial assumptions pursuant to Section 3.60 of the Budget Act of 1990.

(b) If any of the actions of the board of administration under subdivision (a) are held by a decision of a court of competent jurisdiction, from which all appeals are final, to be invalid, all of the provisions of this act shall be null and void.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the benefits of this act to become available commencing with the 1990–91 fiscal year and subsequent fiscal years, this act must take effect immediately.

CHAPTER 1252

An act to add Sections 43020, and 43021 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990].

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

SECTION 1. Section 43020 is added to the Health and Safety Code, to read:

43020. (a) Any person who knowingly violates any regulation adopted pursuant to this part by the state board pertaining to motor vehicle fuels is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both, for each violation.

(b) The recovery of civil penalties pursuant to Section 43016 precludes prosecution pursuant to this section for the same offense. When the executive officer refers a violation to a prosecuting attorney, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to Section 43016 for the same offense.

SEC. 2. Section 43021 is added to the Health and Safety Code, to read:

43021. (a) For purposes of this section, "motor vehicle fuel distributor" means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state shall, not later than January 1, 1992, and annually thereafter on that date, inform the state board in writing of the distributor's principal place of business which shall be a physical address and not a post office box, and any other place of business at which company records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. All such records are subject to physical inspection and photocopying by the state board. A complete record for each delivery shall consist of not less than a copy of the bills of lading from the refinery or bulk terminal from which the fuel is received, a copy of the delivery ticket or receipt showing the final destination of the fuel, and a copy of the invoice showing the purchaser of the fuel.

(e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision (b) or (d) is liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day of noncompliance.

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described in subdivision (c). Any person who transports or provides vehicles to transport motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars ($10,000) per day as well as any penalties prescribed by Section 41963. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of

compliance shall not be liable for any penalties under this subdivision or Section 41963 unless that person has specific knowledge of noncompliance.

(g) Any retailer who knowingly sells or supplies motor vehicle fuel which was delivered to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each transaction.

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease have been delivered to the owner, manager, or attendant on duty at the facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten thousand dollars ($10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified wholesale petroleum distributors, and shall mail a copy to every licensed transporter of petroleum products.

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 1253

An act to add Sections 10261.5 and 10262.5 to the Public Contract Code, relating to public contracts.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 10261.5 is added to the Public Contract Code, to read:

10261.5. (a) Any state agency which fails to make any progress payment within 30 days after receipt of the payment request from a contractor on a construction contract for an undisputed payment request, which was properly submitted by the contractor to the agency, shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Any state agency which independently calculates the

amount due on a progress payment and which fails to make a progress payment within 30 days of the first submittal of the estimate for each contract by the engineer, shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. In the event that the payment is not made within 30 days of receipt of the contractor's request or the first submittal by the engineer, and the Controller has processed the payment within 14 days of receipt of the request or submittal, the contracting state agency shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. In the event that the payment is not made within 30 days of receipt of the contractor's request or the first submittal by the engineer, and the contracting state agency has processed the payment within 16 days after receipt of the request or submittal, the Controller shall pay interest as provided in Section 685.010 of the Code of Civil Procedure.

For purposes of this section, a payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the Controller.

(b) Upon receipt of a payment request, each agency shall require:

(1) That each payment request be reviewed as soon as practicable after receipt for the purpose of determining that a payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned as soon as practicable, but not later than seven days, after receipt, specifying the reasons that the payment request is not a proper payment request.

(3) The number of days available to a state agency to make a timely payment of payment request without incurring interest shall be reduced by the number of days by which an agency exceeds the requirements of paragraph (2).

SEC. 2. Section 10262.5 is added to the Public Contract Code, to read:

10262.5. (a) Notwithstanding any other provision of law, a prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor.

(c) On or before September 1 of each year, the head of each state agency shall submit to the Legislature a report on the number and dollar volume of written complaints received from subcontractors and prime contractors on contracts in excess of three hundred thousand dollars ($300,000), relating to violations of this section.

CHAPTER 1254

An act to amend Sections 13961.1 and 13965 of, and to add Section 13965.2 to, the Government Code, relating to victims of crime.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. It is the intent of the Legislature to improve the system for processing applications for assistance by victims of crime, and making payments to these victims and service providers.

This act will reduce the processing time to the 90-day period required by law, by doing all of the following:

(a) Reducing paperwork and backlog at the local victim-witness centers caused by the unnecessary reapproval process for continued medical wage loss, thereby preventing major delays in the system.

(b) Providing a stable and reliable payment schedule whereby a victim may plan for economic needs.

(c) Insuring timely payment to providers, many of whom refuse to treat victims because of the current backlog of claims.

SEC. 2. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim of a crime if either of the following occur as a result of the crime:

(1) The victim incurs loss of income or support.

(2) The victim requires emergency medical treatment.

(b) Emergency award application forms shall be provided by the board upon request of the applicant. The board shall make available the application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim. Disbursements of funds for emergency awards shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to

designated staff persons, who will use guidelines established by the board, to grant emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the victim's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) If the applicant does not complete the application for a grant or, if, upon final disposition of the victim's claim under this article, it is found that the victim is not eligible for assistance from the board, the victim shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the victim's application, the board grants assistance to the claimant, the amount of the emergency award shall be deducted from the final award of compensation granted to the victim; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's application for assistance, before any appellate action is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(e) The amount of the emergency award shall be dependent upon the immediate needs of the victim, as evidenced by the victim's loss of income or support and losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. In no event shall the amount of the emergency award exceed two thousand dollars ($2,000).

(f) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of the agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) A statement that in the event the victim is denied assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(7) The applicant's signature and a statement that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

(g) The board shall report to the Legislature annually on the advances which became uncollectible in prior years.

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. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the victim's application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the 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. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(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. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(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) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(k) 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.

(*l*) 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 13965.2 is added to the Government Code, to read:

13965.2. Whenever a victim's application for assistance has been approved, and the board determines that an independent evaluation pursuant to paragraph (4) of subdivision (a) of Section 13965 is

appropriate, the victim shall be notified of the name of the provider who is to perform the evaluation within 30 days of that determination.

SEC. 5. It is the intent of the Legislature that the State Board of Control implement paragraphs (1) and (2) of subdivision (a) and subdivision (j) of Section 13965 of the Government Code, as contained in Section 3 of this act, which imposes maximum time limitations for the making of payments to victims of crime and health care providers, as soon as administratively feasible, but no later than June 1, 1991.

SEC. 6. The Board of Control shall report to the Joint Legislative Budget Committee within 30 days after the end of each month on the status of the Victims of Crime Program. This report shall include, but not be limited to, the number of claims received, the number of claims processed, the status of any claims backlog, the status of the claim processing time, staff vacancies, and the financial condition of the Restitution Fund. The board shall include in its report on claims processed the number of claims "zero awarded" (determined to be eligible for compensation but for which no payment has yet been issued), the amount of expenses pending on these claims, the total number of claims covered under the monthly wage loss provision, and the status of those claims.

CHAPTER 1255

An act to add Article 11 (commencing with Section 7180) to Chapter 9 of Division 3 of the Business and Professions Code, to amend Section 9021.5 of, and to add Sections 9021.6, 9021.7, and 9021.8 to, the Labor Code, relating to asbestos, and making an appropriation therefor.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Article 11 (commencing with Section 7180) is added to Chapter 9 of Division 3 of the Business and Professions Code, to read:

Article 11. Asbestos Consultants

7180. No person shall, on or after July 1, 1992, engage in the practice of an asbestos consultant as defined in Section 7181, or as a site surveillance technician as defined in Section 7182, unless he or she is certified by the Division of Occupational Safety and Health pursuant to regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

7180.5. When a building owner or operator engages the services of a person to perform asbestos consulting or site surveillance technician activities as defined in Sections 7181 and 7182 after July 1, 1992, the building owner or operator shall contract with a person who is certified by the Division of Occupational Safety and Health pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

7181. An "asbestos consultant," as used in this chapter, means any person who contracts to provide professional health and safety services relating to asbestos-containing material, as defined in subdivision (b) of Section 6501.8 of the Labor Code, including building inspections, abatement project design, contract administration, supervision of site surveillance technicians as defined in Section 7182, sample collections, preparation of asbestos management plans, and clearance air monitoring.

7182. A "site surveillance technician" means any person who acts as an independent onsite representative of an asbestos consultant who monitors the asbestos abatement activities of others, provides asbestos air monitoring services for area and personnel samples, and performs building surveys and contract administration at the direction of an asbestos consultant.

7183. (a) Within 15 days of receipt of an application for certification pursuant to this article, the division shall inform the applicant in writing either (1) that the application is complete and accepted, or (2) that it is deficient and that additional information, documentation, or examination, specified in the notification, is required to complete the application. Within 45 days of the date of filing of a completed application, the division shall issue to each person who qualifies for certification pursuant to this article, a certification card which shall identify the holder thereof and the type of certification for which he or she has qualified. If the division cannot comply with the notification deadlines specified in this section, the division shall issue a provisional certification card until all procedures specified in this section are completed.

(b) The certification required by this article shall satisfy all certification requirements of the division for asbestos consultants and site surveillance technicians.

7183.5. The division shall enforce this article. In the event the division determines that a certified asbestos consultant or site surveillance technician obtained certification under false pretenses, or that a certified asbestos consultant or site surveillance technician acted in a grossly negligent or fraudulent manner, or engaged in repeated acts of negligence, the division shall revoke that person's certification. The division shall only revoke a certification after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

7184. A person shall qualify as a certified asbestos consultant by meeting all of the following requirements:

(a) Having any one of the following:

(1) One year of asbestos-related experience, and a bachelor of science degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(2) Two years of asbestos-related experience, and a bachelor's degree.

(3) Three years of asbestos-related experience, and an associate of arts degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(4) Four years of asbestos-related experience and a high school diploma or its equivalent.

(b) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(c) Demonstration of proficiency by achieving a passing score as determined by the division on an examination approved or administered by the division including, but not limited to, the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, disposal, and general industry safety hazards.

(4) State-of-the-art asbestos abatement and control work procedures. The division shall define and incorporate into the certification standards the term "state-of-the-art" for purposes of this article, in the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(5) Federal Asbestos Hazard Emergency Response Act training information and procedures for inspectors, management planners, and supervisors, as provided for under Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code, or the equivalent, as determined by the division.

(6) Information concerning industrial hygiene sampling methodology, including asbestos sampling and analysis techniques and recordkeeping.

7185. A person shall qualify as a certified site surveillance technician by meeting all of the following requirements:

(a) Having six months of asbestos-related experience under the supervision of an asbestos consultant.

(b) Possession of a high school diploma or equivalent.

(c) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of

Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(d) Demonstration of proficiency by achieving a passing score, as determined by the division, on an examination approved or administered by the division covering the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, and general industry safety hazards.

(4) State-of-the-art asbestos abatement and control work procedures.

(5) Industrial hygiene sampling methodology, including sampling techniques and recordkeeping.

7187. When a building owner or operator contracts with an asbestos consultant or site surveillance technician for performance of the activities described in Sections 7181 and 7182, that asbestos consultant or site surveillance technician shall not have any financial or proprietary interest in an asbestos abatement contractor hired for the same project. However, this section shall not preclude the hiring of a consultant by a contractor for the purpose of providing health and safety services for the personnel of the contractor.

It is the intent of the Legislature in enacting this section to make certain that the asbestos-related work performed by a consultant, including, but not limited to, clearance air monitoring, project design, and contract administration, is performed in a manner which provides for independent professional judgment undertaken without consideration of the financial or beneficial interest of the contractor.

7189. Any person who engages in the practices of an asbestos consultant or a site surveillance technician, who is not certified pursuant to this article, or who violates Section 7187, is subject to one of the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000).

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any asbestos consultant's or site surveillance technician's certification, and a fine not not less than three thousand dollars ($3,000) or more than five thousand dollars ($5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment.

The division shall only impose these penalties after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government

Code.

7189.5. This article shall apply to asbestos abatement projects within the meaning of asbestos-related work as defined in Section 6501.8 of the Labor Code, and which involves 100 square feet or more of surface area of asbestos containing material.

7189.7. (a) Nothing in this article shall be construed to require agencies of the state to contract with asbestos consultants or site surveillance technicians who are not employees of the state as long as employees of the state who are assigned to perform the activities described in Sections 7181 and 7182 have been certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code. Where feasible, the state shall assign a state civil service classification of associate industrial hygienist or senior industrial hygienist to carry out asbestos consultation activities as described in Section 7181 for state-owned and leased buildings. The individuals in the classification assigned shall be certified as required in this article before performing these activities.

(b) Nothing in this article shall be construed to require attorneys who provide legal advice on asbestos-related matters to building owners or operators to be certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

SEC. 2. Section 9021.5 of the Labor Code is amended to read:

9021.5. (a) Not later than January 1, 1987, the Division of Occupational Safety and Health shall propose a regulation concerning asbestos-related work, as defined in Section 6501.8, to the Occupational Safety and Health Standards Board for review and adoption so as to protect most effectively the health and safety of employees. The regulation shall also include, but not be limited to, specific work practices and specific requirements for certification of all employees engaged in asbestos-related work.

(b) (1) Not later than July 1, 1991, the Division of Occupational Safety and Health shall propose regulations for the certification of asbestos consultants and site surveillance technicians to the Occupational Safety and Health Standards Board for consideration and action. By January 1, 1992, the board shall adopt regulations regarding certification. The regulations shall address and encompass procedures to determine the requirements for the certification provided for by Article 11 (commencing with Section 7180) of Chapter 9 of Division 3 of the Business and Professions Code. The division shall prepare and administer an examination to determine qualifications for certification pursuant to subdivision (b) of Section 7184 and subdivision (c) of Section 7185 of the Business and Professions Code. The examination shall be administered on a periodic, regularly scheduled basis.

(2) The division may, in lieu of preparing and administering its own certification examination, approve one or more public or private institutions which offer programs in asbestos abatement

training to prepare and administer the examination described in subdivision (b) of Section 7184 and subdivision (c) of Section 7185 of the Business and Professions Code. However, the division shall not approve any institution, organization, individual, or other entity for administering a certification examination if that institution, organization, individual or other entity engages, for compensation, in any aspect of asbestos abatement work. For purposes of developing or approving a certification examination pursuant to this section, the division shall consult with an advisory committee of individuals who have academic and professional experience in asbestos abatement work, including a certified industrial hygienist, representatives of asbestos abatement workers, and asbestos abatement contractors.

(c) This section does not exempt any employer from complying with the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of this code) and regulations adopted thereunder, nor does it exempt any employer from complying with Section 5208 of Title 8 of the California Administrative Code. For products not requiring contractor certification pursuant to subdivision (a) of Section 7058.5 of the Business and Professions Code, training and certification of employees shall be done by the employer.

SEC. 3. Section 9021.6 is added to the Labor Code, to read:

9021.6. The division may charge a fee to each asbestos consultant and site surveillance technician who applies for certification pursuant to subdivision (b) of Section 9021.5 and Article 11 (commencing with Section 7180) of Chapter 9 of Division 3 of the Business and Professions Code. The fee shall be sufficient to cover the division's cost for administering the certification process, including preparation and administration of the examination. The fees collected shall be deposited in the Asbestos Consultant Certification Fund which is hereby created. Notwithstanding Section 13340 of the Government Code, this fund shall be continuously appropriated for the purpose of administering the certification process. Establishment of any fee pursuant to this section shall be accomplished through the regulatory process required by subdivision (b) of Section 9021.5.

SEC. 4. Section 9021.7 is added to the Labor Code, to read:

SEC. 5. Section 9021.8 is added to the Labor Code, to read:

9021.8. All asbestos consultant and site surveillance technician certifications shall be renewed annually. The division shall require asbestos consultants and site surveillance technicians to complete the annual refresher courses as required under the Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) or the equivalent, as determined by the division.

SEC. 6. The Division of Occupational Safety and Health shall form the advisory committee required by paragraph (2) of subdivision (b) of Section 9021.5 of the Labor Code as soon as

practicable.

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 1256

An act to amend Sections 101 and 130 of the Business and Professions Code, to amend Sections 1812.501, 1812.502, 1812.509, 1812.516, 1812.520, 1812.521, 1812.524, and 1812.526 of the Civil Code, and to amend Section 11501 of the Government Code, relating to employment services.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Board of Dental Examiners of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Board of Examiners in Veterinary Medicine.

(f) The State Board of Accountancy.

(g) The California State Board of Architectural Examiners.

(h) The State Board of Barber Examiners.

(i) The State Board of Registration for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The State Board of Cosmetology.

(*l*) The State Board of Funeral Directors and Embalmers.

(m) The Structural Pest Control Board.

(n) The Bureau of Home Furnishings and Thermal Insulation.

(o) The Board of Registered Nursing.

(p) The Board of Chiropractic Examiners.

(q) The Board of Behavioral Science Examiners.

(r) The State Athletic Commission.

(s) The Cemetery Board.

(t) The State Board of Guide Dogs for the Blind.
(u) The Bureau of Collection and Investigative Services.
(v) The Certified Shorthand Reporters Board.
(w) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
(x) The California State Board of Landscape Architects.
(y) The Bureau of Electronic and Appliance Repair.
(z) The Board of Osteopathic Examiners.
(aa) The Division of Investigation.
(ab) The Bureau of Automotive Repair.
(ac) The State Board of Registration for Geologists and Geophysicists.
(ad) The State Board of Examiners of Nursing Home Administrators.
(ae) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1st.
(b) Subdivision (a) applies to the following boards or committees:
(1) Medical Board of California.
(2) California Board of Podiatric Medicine.
(3) Physical Therapy Examining Committee.
(4) Board of Registered Nursing.
(5) Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
(6) State Board of Optometry.
(7) California State Board of Pharmacy.
(8) Board of Examiners in Veterinary Medicine.
(9) California State Board of Architectural Examiners.
(10) California State Board of Landscape Architects.
(11) State Board of Barber Examiners.
(12) State Board of Registration for Professional Engineers and Land Surveyors.
(13) Contractors' State License Board.
(14) State Board of Cosmetology.
(15) State Board of Guide Dogs for the Blind.
(16) State Board of Funeral Directors and Embalmers.
(17) Board of Behavioral Science Examiners.
(18) Structural Pest Control Board.
(19) Cemetery Board.
(20) Bureau of Electronic and Appliance Repair Advisory Board.
(21) Certified Shorthand Reporters Board.
(22) State Board of Registration for Geologists and Geophysicists.
(23) State Athletic Commission.
(24) Board of Osteopathic Examiners of the State of California.

SEC. 3. Section 1812.501 of the Civil Code is amended to read:

1812.501. (a) The term "employment agency" or "agency" means:

(1) Any person who, for a fee or other valuable consideration to be paid, directly or indirectly by a jobseeker, performs, offers to perform or represents it can or will perform any of the following services:

(A) Procures, offers, promises, or attempts to procure employment or engagements for others or employees for employers.

(B) Registers persons seeking to procure or retain employment or engagement.

(C) Gives information as to where and from whom this help, employment, or engagement may be procured.

(D) Provides employment or engagements.

The term "employment agency" or "agency" shall not mean or include any employment counseling service or any job listing service.

(2) Any person who offers, as one of its main objects or purposes, to procure employment for any person who will pay for its services, or that collects dues, tuition, or membership or registration fees of any sort, where the main object of the person paying the same is to secure employment.

(3) Any person who for a fee or other valuable consideration procures, offers, promises, provides, or attempts to procure babysitting or domestic employment for others or domestics or babysitters for others.

(b) (1) The term "employment counseling service" means any person who offers, advertises or represents it can or will provide any of the following services for a fee: career counseling, vocational guidance, aptitude testing, executive consulting, personnel consulting, career management, evaluation, or planning, or the development of resumés and other promotional materials relating to the preparation for employment. The term "employment counseling service" shall not mean or include persons who provide services strictly on an hourly basis with no financial obligation required of the consumer beyond the hourly fee for services rendered. An "employment counseling service" does not include the functions of an "employment agency" as defined in subdivision (a).

(2) The term "employment counseling service" does not include:

(A) Businesses which are retained by, act solely on behalf of, and are compensated solely by, prior or current employers, which do not require any "customer" to sign a contract, and do not in any way hold any "customer" liable for fees.

(B) Any provider of vocational rehabilitation in which the counseling services are paid for by insurance benefits, where the counseling is provided as a result of marital dissolution or separation proceedings to prepare one of the spouses for reentry into the job market and where the fees are paid by some party other than the person receiving the counseling services.

The exemption provided in this subparagraph does not apply to

any vocational rehabilitation counselor who receives any payments directly from the individual customer receiving the counseling.

(C) Any person who engages solely in the preparation of resumés and cover letters, provided that the resumé writing service does not advertise or hold itself out as offering other job seeking or placement services and does not charge more than three hundred dollars ($300) for any resumé, cover letter, or combination of both to any single customer in any individual transaction.

(D) Any public educational institution.

(E) Any private educational institution established solely for educational purposes which, as a part of its curriculum, offers employment counseling to its student body and which institution conforms to the requirements of Section 94310 of the Education Code.

(F) A psychologist or psychological corporation licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, providing psychological assessment, career or occupational counseling, or consultation and related professional services within their scope of practice.

(G) Educational psychologists licensed pursuant to Chapter 13 (commencing with Section 4986) of Division 2 of the Business and Professions Code, providing counseling services within their scope of practice.

(c) The term "job listing service" means any person who provides, offers, or represents it can or will provide any of the following services, for a fee or other valuable consideration to be paid, directly or indirectly, by the jobseeker in advance of, or contemporaneously with, performance of these services: matches jobseekers with employment opportunities, providing or offering to provide jobseekers lists of employers or lists of job openings or like publications, or preparing resumés or lists of jobseekers for distribution to potential employers.

(d) A " nurses' registry" as defined in subdivision (b) of Section 1812.524 is an employment agency. However, unless otherwise provided for in this title, a nurses' registry shall not be required to comply with Chapter 2 (commencing with Section 1812.503) regulating employment agencies but shall instead be required to comply with Chapter 7 (commencing with Section 1812.524).

(e) "Jobseeker" means a person seeking employment.

(f) "Employer" means any individual, company, partnership, association, corporation, or agent, employee or representative for whom or for which an employment agency or job listing service attempts to obtain an employee or to place a jobseeker.

(g) "Job order" means any written or oral instruction, direction, or permission granted by an employer or its agent to an employment agency or job listing service to refer jobseekers for a specified job.

(h) "Domestic agency" means any agency which provides or attempts to provide employment by placement of domestic help in private homes.

(i) "Deposit" means any money or valuable consideration received by an employment agency or job listing service from a jobseeker for referring the jobseeker to a position of employment prior to the jobseeker's acceptance of a position.

(j) "Fee" means:

(1) Any money or other valuable consideration paid, or promised to be paid, for services rendered or to be rendered by any person conducting an employment agency, employment counseling service, or job listing service under this title.

(2) Any money received by any person in excess of that which has been paid out by him for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(k) "Registration fee" means any charge made, or attempted to be made, by an employment agency for registering or listing an applicant for employment, for letter writing, or any charge of a like nature made, or attempted to be made without having a bona fide order for the placement of the applicant in a position.

(*l*) "Person" means any individual, corporation, partnership, trust, association, or other organization.

SEC. 4. Section 1812.502 of the Civil Code is amended to read:

1812.502. (a) This title does not apply to any person who provides any of the services described in subdivision (a) of Section 1812.501 and who charges fees exclusively to employers for those services. The exemption from regulation provided by this subdivision does not apply to any person who provides babysitting or domestic employment for others. This subdivision does not apply to an employment counseling service as defined in subdivision (b) of Section 1812.501.

(b) This title shall not apply to any nonprofit corporation, organized for the purpose of economic adjustment, civic betterment, and the giving of vocational guidance and placement to its members, or others, including employment counseling services, when all of the following conditions exist:

(1) None of the directors, officers, or employees thereof receive any profit other than a nominal salary for services performed for the organization or corporation.

(2) No fee is charged for those services, though a voluntary contribution may be requested.

(3) Membership dues or fees charged are used solely for maintenance of the organization or corporation.

(c) Nothing in this title shall apply to a nonprofit corporation which has been formed in good faith for the promotion and advancement of the general professional interests of its members and which maintains a placement service principally engaged in securing employment for such members with the state or any county, city, district or other public agency under contracts providing employment for one year or longer, or any nonprofit corporation exempted by subdivision (b).

(d) This title shall not apply to a labor organization as defined in

Section 1117 of the Labor Code, a newspaper of general circulation, bona fide newsletter, magazine, trade or professional journal, or other publication of general circulation, the main purpose of which is dissemination of news, reports, trade or professional information, or information not intended to assist in locating, securing, or procuring employment or assignments for others.

(e) As used in this title, "employment agency" or "agency" does not include a nursing school, business school, or vocational school, except that if such a school charges a fee for placement, the school shall be an employment agency within the meaning of this title.

(f) (1) A job listing service which meets the requirements specified in paragraph (2) or (3) shall not be subject to any of the following: Sections 1812.515, 1812.516, 1812.517, and 1812.518; subdivisions (a) and (b), and paragraph (3) of subdivision (c), and subdivision (d) of Section 1812.519; paragraph (2) of subdivision (b), and subdivisions (c), (d), (e), and (f) of Section 1812.520; and Section 1812.521.

(2) A job listing service shall be exempt pursuant to paragraph (1) if it complies with all of the following:

(A) Does not provide, offer, or imply the offer of, services related to employment.

(B) Does not offer or sell lists of employers or job openings to jobseekers on an in-person basis.

(C) Maintains records of all its advertisements, identified by date and publication, and the sources of information used for the preparation of lists of employers and job openings, from which can be determined the accuracy of any statistics regarding success rate or similar statistics used in its advertising, promotional materials, or oral or written statements to jobseekers.

(D) Identifies, on each list of employers and job openings, its general source of information for jobs included on that list when the source of information is a publication or other public record.

(E) Provides, at or before the time of delivery of the list, a prominent written statement to the jobseeker granting the jobseeker a right to return the list for an immediate refund of the purchase price during a stated period of time which expires not less than 10 days from the date of delivery of the list. The list shall be deemed returned upon delivery to the address from which it was obtained or upon deposit in the mail properly addressed to that address, with postage prepaid.

(3) A job listing service shall be exempt pursuant to paragraph (1) if it complies with all of the following:

(A) A majority interest in the job listing service is owned by one or more colleges or universities, or alumni associations affiliated therewith, and each college or university is accredited by both (i) an accrediting agency recognized as such by the United States Department of Education and (ii) a member organization of the Council of Postsecondary Accreditation.

(B) The job listing service provides services related to

employment exclusively for jobseekers who are the alumni of colleges or universities specified in subparagraph (A).

(C) The job listing service does not require, as a condition to receiving employment services, that the applicant have completed courses or examinations beyond the requirements for graduation from the college or university specified in subparagraph (A).

(D) More than 50 percent of the annual revenues received by the job listing service are derived from paid subscriptions of prospective employers.

SEC. 5. Section 1812.509 of the Civil Code is amended to read:

1812.509. (a) No employment agency shall, when employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Part 27 (commencing with Section 48000) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in that employment.

(b) Every employment agency shall notify each jobseeker before sending the jobseeker in response to a request for employment whether a labor contract is in existence at the establishment to which the jobseeker is being sent, and whether union membership is required.

(c) No employment agency shall send a jobseeker to any place where a strike, lockout, or other labor trouble exists without notifying the jobseeker of that fact and shall in addition thereto enter a statement of those conditions upon the contract or receipt given to the jobseeker.

(d) No babysitting, domestic, or other employment agency which procures babysitting or domestic employment for employers shall refer babysitters or domestics for any employment without first conducting a personal interview of the jobseeker and making a reasonable effort to verify the experience or training of the jobseeker.

SEC. 6. Section 1812.516 of the Civil Code is amended to read:

1812.516. (a) Every job listing service shall give a written contract to every jobseeker from whom a fee or deposit is to be received, whether directly or indirectly. The original and one copy of the contract shall be given to the jobseeker at the time the jobseeker signs the contract and before the job listing service accepts any fee or deposit or the jobseeker becomes obligated to pay any such fee or deposit. The contract shall contain all of the following:

(1) The name of the job listing service and the addresses and telephone numbers of the principal office of the job listing service and the location providing the listing services to the jobseeker.

(2) The amount of the fee to be charged and to be collected from the jobseeker.

(3) A description of the service to be performed by the job listing service, including significant conditions, restrictions, and limitations where applicable.

(4) A description of the jobseeker's specifications for the

employment opportunity in clear language understandable to the jobseeker, including, but not limited to, the following:

(A) Kind of work or employment.

(B) Interests of jobseeker.

(C) Qualifications of jobseeker.

(D) Daily hours of work, the wages or salary, benefits, and other conditions of employment.

(E) Location of job.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) The following statement, in immediate proximity to the space reserved for the jobseeker's signature, in type no smaller than 10-point boldfaced type:

YOUR RIGHT TO CANCEL

/enter date of transaction/

"You may cancel this contract for job listing services without any penalty or obligation, if notice of cancellation is given, in writing, within three business days from the above date.

"To cancel this contract, just mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, to (name of job listing service) at (address of its place of business), NOT LATER THAN MIDNIGHT OF /date/."

CANCELLATION NOTICE

I hereby cancel this contract.

Dated: _____

_____ Customer's Signature"

Until the job listing service has complied with this section the jobseeker may cancel the job listing service's contract.

(7) The following statement, with the caption in type no smaller than 10-point boldfaced type and the remainder in a size no smaller than that generally used throughout the contract, and in full capitals, boldface, or italics:

"RIGHT TO REFUND"

"If, within seven business days after payment of a fee or deposit, the job listing service has not supplied you with at least three available employment opportunities meeting the specifications of the contract as to type of job; interests of jobseeker; qualifications of jobseeker; hours, salary, benefits, and other conditions of employment; location of job; and any other specifications expressly

set forth in the contract, the full amount of the fee or deposit paid shall be refunded to you upon your request.

"If you do not obtain a job through the services of the job listing service, or if you obtain employment which lasts less than 90 days, any amount paid in fees or deposits in excess of a twenty-five dollar ($25) service charge shall be refunded to you, upon your request after expiration of the contract.

"Any refund due must be made to you within 10 days of your request. If the refund is not made in that time, the job listing service must pay to you an additional sum equal to the amount of your fee or deposit."

(8) If any labor trouble exists at the place of employment, that fact shall be stated in the listing of that employment provided to the jobseeker.

(b) All contracts shall be dated and shall be made and numbered consecutively in triplicate, the original and each copy to be signed by the jobseeker and the person acting for the job listing service. The original and one copy shall be given to the jobseeker and the other copy shall be kept on file at the job listing service.

(c) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

SEC. 7. Section 1812.520 of the Civil Code is amended to read:

1812.520. (a) No job listing service shall make or cause to be made any false, misleading or deceptive advertisements or representations concerning the services that the job listing service will provide to jobseekers.

(b) (1) No job listing service shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements.

(2) All advertisements of a job listing service shall contain the correct name of the job listing service and one of the following:

(A) The street address of the job listing service's place of business.

(B) The correct telephone number of the job listing service at its place of business.

(3) No job listing service shall give any false information or make any false promises or representations concerning an engagement or employment to any jobseeker.

(4) No job listing service shall, by its choice of name or by advertisement or representation, represent itself to be an employment agency or to perform the services of an employment agency.

(c) Special requirements not usually associated with a job shall be specified in any advertisement. When the location of the position advertised is more than 50 miles from the job listing service office responsible for the advertisement, it shall state either the location or that the job is "nonlocal." Special benefits of the job, if advertised, shall be specifically described and substitute terms or symbols such as "extras" or "+" shall not be sufficient.

(d) An advertised salary shall be based upon the starting salary contained in the job order. An advertised range of starting salaries shall be specified by preceding the minimum salary and maximum salary by terms "from" and "to" respectively. When the job order contains only the maximum amount of a salary range, that advertised salary shall be preceded by the word "to." If a maximum salary is dependent upon the jobseeker's experience, the advertised salary may be described by listing the minimum salary and the term "up Depending on Experience" or "up D.O.E." The words "open" and "negotiable" or words or symbols of like import shall not be used as a substitute for the salary. If an advertised salary is based in whole or in part on commissions, that fact shall be indicated in the advertisement.

(e) All job listing services shall maintain a record of all advertised jobs, correlated to show the date and the publication in which the advertisement appeared and the job order number of each job advertised, retrospectively for a period of one year.

SEC. 8. Section 1812.521 of the Civil Code is amended to read:

1812.521. (a) No job listing service shall, when employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Part 27 (commencing with Section 48000) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in that employment.

(b) Every job listing service shall notify each jobseeker before sending the jobseeker in response to a request for employment whether a labor contract is in existence at the establishment to which the jobseeker is being sent, and whether union membership is required.

(c) No job listing service shall send a jobseeker to any place where a strike, lockout, or other labor trouble exists without notifying the jobseeker of that fact and shall in addition thereto enter a statement of those conditions upon the contract or receipt given to the jobseeker.

SEC. 9. Section 1812.524 of the Civil Code is amended to read:

1812.524. (a) "Nursing service" means the assignment of a nurse, as a private duty, self-employed, licensed registered nurse, licensed vocational nurse, or practical nurse to render service to a patient under the direction or supervision of a physician or surgeon registered to practice in this state.

(b) "Nurses' registry" means a person who engages in the business of obtaining and filling commitments for nursing service. A nurses' registry which makes or plans to make referrals for nurses' employment other than private duty nursing shall comply with Chapters 1 (commencing with Section 1812.500) and 2 (commencing with Section 1812.503) of this title with respect to those referrals.

(c) "Private duty nurse" means a self-employed nurse rendering service in the care of either a physically or mentally ill patient under the direction of a physician or surgeon, but who is paid by either the

patient or the designated agent of the patient and who accepts the responsibilities of a self-employed private contractor.

SEC. 10. Section 1812.526 of the Civil Code is amended to read:

1812.526. Nurses' registries may enter into a continuing contract with private duty nurses covering the assignment of those nurses by the nurses' registries. The continuing contract shall state:

(a) The name, address, and telephone number of the nurses' registry.

(b) The name, address, and telephone number of the nurse.

(c) The current fee schedule of the nurses' registry.

(d) The date of its execution by the nurses' registry and the nurse.

(e) The contract shall specify that the provisions thereof are to govern only the assignment of private duty nurses and shall do all of the following:

(1) Designate the nurses' registry as the continuous agent of the nurse for purposes of assignment.

(2) Provide that the contract in effect may be terminated at any time by written notice given by one to the other for any future assignment.

(3) Provide for delivery to the nurse at the time of the execution of the contract a written schedule of the rates of nurses' charges currently agreed to between the nurses' registry and the nurse for the nurse's services to the patient.

(4) State that the nurses' registry will immediately notify the nurse in writing of all subsequent changes in the rates to be charged the patient for services, and that the nurse shall agree to abide by these rates.

(5) Contain express undertakings by the nurses' registry that it shall continuously maintain true and correct records of orders and assignments as provided in this title.

(6) Provide that the nurses' registry shall periodically and at least once each month render to the nurse a written statement of all fees claimed to be due the nurses' registry, and further that the statement shall adequately identify each assignment as to the inception date and period of service covered by the claim, including the name of the patient and the amount of service fee claimed.

(7) Contain appropriate wording advising the nurse of his or her right to dispute the correctness of any service fee claimed by the nurses' registry in the written statement referred to above, and that in the absence of objections within a reasonable time, any such service fee may be presumed to be correctly charged.

(8) Include any other term, condition, or understanding agreed upon between the nurses' registry and the nurse.

(f) Each contract shall be numbered consecutively in original and duplicate, both to be signed by the nurse and the nurses' registry. The original shall be given to the nurse and the duplicate shall be kept on file at the nurses' registry within the nurse's records.

(g) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

SEC. 11. Section 11501 of the Government Code is amended to read:

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) The enumerated agencies referred to in Section 11500 are:

Accountancy, State Board of
Air Resources Board, State
Alcohol and Drug Programs, State Department of
Alcoholic Beverage Control, Department of
Architectural Examiners, California State Board of
Attorney General
Auctioneer Commission, Board of Governors of
Automotive Repair, Bureau of
Barber Examiners, State Board of
Behavioral Science Examiners, Board of
Boating and Waterways, Department of
Cancer Advisory Council
Cemetery Board
Chiropractic Examiners, Board of
Collection and Investigative Services, Bureau of
Community Colleges, Board of Governors of the California
Conservation, Department of
Consumer Affairs, Director of
Contractors, Registrar of
Corporations, Commissioner of
Cosmetology, State Board of
Dental Examiners of California, Board of
Education, State Department of
Electronic and Appliance Repair, Bureau of
Engineers and Land Surveyors, State Board of Registration for Professional
Fair Employment and Housing Commission
Fair Political Practices Commission
Fire Marshal, State
Food and Agriculture, Director of
Forestry and Fire Protection, Department of
Funeral Directors and Embalmers, State Board of
Geologists and Geophysicists, State Board of Registration for
Guide Dogs for the Blind, State Board of
Health Services, State Department of
Highway Patrol, Department of the California
Home Furnishings and Thermal Insulation, Bureau of
Horse Racing Board, California
Housing and Community Development, Department of
Insurance Commissioner
Labor Commissioner
Landscape Architects, State Board of
Medical Board of California, Medical Quality Review Committees and Examining Committees

Motor Vehicles, Department of
Nursing, Board of Registered
Nursing Home Administrators, Board of Examiners of
Optometry, State Board of
Osteopathic Examiners of the State of California, Board of
Pharmacy, California State Board of
Public Employees' Retirement System, Board of Administration of the
Real Estate, Department of
San Francisco, San Pablo and Suisun, Board of Pilot Commissioners for the Bays of
Savings and Loan Commissioner
School Districts
Secretary of State, Office of
Shorthand Reporters Board, Certified
Social Services, State Department of
Statewide Health Planning and Development, Office of
Structural Pest Control Board
Tax Preparer Program, Administrator
Teacher Credentialing, Commission on
Teachers' Retirement System, State
Transportation, Department of, acting pursuant to the State Aeronautics Act
Veterinary Medicine, Board of Examiners in
Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

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 1257

An act to amend Section 12290 of the Penal Code, relating to firearms.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 24, 1990]

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

SECTION 1. Section 12290 of the Penal Code, as amended by Chapter 177 of the Statutes of 1990, is amended to read:

12290. (a) Any licensed gun dealer, as defined in subdivision (c), who lawfully possesses an assault weapon pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the weapon between dealers or out of the state, display it at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286. Any transporting allowed by this section must be done as required by Section 12026.1.

(b) (1) Any licensed gun dealer, as defined in subdivision (c), may take possession of any assault weapon for the purposes of servicing or repair from any person to whom it is legally registered or who has been issued a permit to possess it pursuant to this chapter.

(2) Any licensed gun dealer may transfer possession of any assault weapon received pursuant to paragraph (1), to a gunsmith for purposes of accomplishing service or repair of the same. Transfers are permissible only to the following persons:

(A) A gunsmith who is in the dealer's employ.

(B) A gunsmith with whom the dealer has contracted for gunsmithing services. In order for this subparagraph to apply, the gunsmith receiving the assault weapon must hold all of the following:

(i) A dealer's license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(ii) Any business license required by a state or local governmental entity.

(c) The term "licensed gun dealer," as used in this article, means a person who has a federal firearms license, any business license required by a state or local governmental entity, and a seller's permit issued by the State Board of Equalization.

CHAPTER 1258

An act relating to local government financing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 25, 1990.]

I am deleting the $15 million appropriation contained in Section 2 of Senate Bill No. 1569.

This appropriation may only be used for allocation to counties which are granted waivers to various program matching requirements pursuant to AB 2800. Since I have vetoed AB 2800, the $15 million appropriation in this bill has no application. Therefore, the deletion of the appropriation in Section 2 of this bill corresponds to the action already taken on AB 2800.

This bill, along with other actions taken by my Administration, will result in an $11.1 million relief package for Butte County. I commend the author of SB 1569, along with Senator Jim Nielsen and Assembly [Member] Chris Chandler for their successful efforts to help bring together a solution which has been adopted by the Butte County Board of Supervisors.

With this deletion, I approve Senate Bill No 1569.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. (a) For purposes of the 1990–91 fiscal year, one hundred fifty million dollars ($150,000,000) shall be added to the amounts appropriated by Item 4260-111-001 of the Budget Act of 1990 for the Medically Indigent Services Program and the County Medical Services Program. This amount shall be added pursuant to Section 16703 of the Welfare and Institutions Code.

(b) The amounts in the following schedule shall be deducted from the amount the county or the county medical services program would have received if the one hundred fifty million dollars ($150,000,000) had been appropriated by Item 4260-111-001 of the Budget Act of 1990:

Alameda	$ 6,689,330
Contra Costa	2,930,990
Fresno	3,589,723
Kern	2,138,692
Lake	389,827
Los Angeles	58,194,656
Mendocino	631,384
Merced	894,540
Monterey	1,403,497
Orange	9,708,521
Placer	598,096
Riverside	5,364,559
Sacramento	5,845,153
San Bernardino	4,993,964
San Diego	12,033,000
San Francisco	2,000,100

San Joaquin	2,382,127
San Luis Obispo	892,331
San Mateo	2,103,353
Santa Barbara	1,354,274
Santa Clara	5,576,488
Santa Cruz	1,337,866
Stanislaus	1,945,585
Tulare	1,664,444
Ventura	2,241,557
Yolo	658,678
County Medical Services Program	12,437,263

(c) The schedule set forth in subdivision (b) shall only be used to calculate the reduction of one hundred fifty million dollars ($150,000,000) made in the 1990–91 fiscal year.

SEC. 2. The sum of fifteen million dollars ($15,000,000) is hereby appropriated from the General Fund to the Controller to be allocated only to a county facing the possibility of imminent insolvency. These funds may be allocated only if Assembly Bill 2800 of the 1989–90 Regular Session, is chaptered and the Director of Finance grants funded waivers pursuant to the provisions of Assembly Bill 2800. The allocation shall be only that portion necessary to finance the funded waivers.

SEC. 3. For purposes of the appropriations necessary for funded waivers as provided in subdivision (d) of Section 11019.7 of the Government Code, and for the 1990–91 fiscal year only, the appropriation made pursuant to Section 2 of this act shall be deemed an appropriation made in the annual Budget Act.

SEC. 4. (a) The Legislature finds and declares as follows:

(1) Although the County of Butte has instituted severe budget reductions, the revenue available to the county will not be sufficient to cover the expenditures anticipated for the 1990–91 fiscal year.

(2) Because of the serious nature of the county's fiscal difficulties, officials of the County of Butte have contemplated initiating bankruptcy proceedings.

(3) A county is an integral part of the government of the state, and the entry of any county into bankruptcy would be an unprecedented event with possibly major statewide fiscal implications.

(4) Because of the severe economic circumstances in the County of Butte, and in order to ensure the uninterrupted provision of necessary mental health services in that county, it is necessary that the normal county match funding requirements be waived and funded by the state for the 1990–91 fiscal year.

(5) During the 1989–90 fiscal year, the California Department of Forestry provided firefighting services to the County of Butte, and these services involved a cost to the State of California in the amount of two million three hundred thousand dollars ($2,300,000).

SEC. 5. (a) The sum of seven hundred thousand dollars ($700,000) is hereby appropriated from the General Fund to the

Controller for allocation to the County of Butte for the purposes of county revenue stabilization. The actual amount allocated from the appropriation in this act shall not exceed the lesser of the amounts set forth in paragraphs (1) and (2):

(1) Seven hundred thousand dollars ($700,000); or

(2) The difference, as determined by the Director of Finance, between the amount allocated to the County of Butte pursuant to Item 9210-101-001 of Section 2.00 of the Budget Act of 1990 and the amount that would be allocated to the County of Butte using the formulas and definitions specified in Section 16265.2 of, and subdivision (a) of Section 16265.4 of, the Government Code.

(b) Upon written authorization of the Director of Finance, the Controller shall allocate, on or before December 31, 1990, the amount determined pursuant to subdivision (a).

(c) Any amount allocated pursuant to this act shall be included in the appropriations limit of the County of Butte, calculated as specified in Article XIII B of the California Constitution, and shall be deemed a general purpose revenue of the County of Butte in accordance with subdivision (d) of Section 16265.2 of the Government Code.

SEC. 6. (a) Pursuant to Section 4485 of the Penal Code, the requirement that county matching funds of 25 percent be provided before expenditure can be made from the 1986 County Correctional Facility Capital Expenditure Fund is waived as to the County of Butte.

(b) Pursuant to paragraph (3) of subdivision (a) of Section 4496.12 of the Penal Code, the requirement that county matching funds of 25 percent be provided before expenditure can be made from the 1988 County Correctional Facility Capital Expenditure and Youth Facility Bond Fund is waived as to the County of Butte.

(c) Notwithstanding Section 5705 of the Welfare and Institutions Code or any other provision of law, all county matching requirements for funding of mental health services provided under the Short-Doyle Act (Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code) shall be waived, and funded by the state, as to the County of Butte for both local services and state hospitals for the 1990–91 fiscal year.

SEC. 7. Pursuant to subdivision (d) of Section 4496.54 of the Penal Code, the requirement that county matching funds of 25 percent be provided before expenditure can be made from the 1990 County Correctional Facility Capital Expenditure and Juvenile Facility Bond Fund is waived as to the County of Butte.

SEC. 8. Section 7 of this act shall become operative only if the voters adopt the County Correctional Facility Capital Expenditure and Juvenile Facility Bond Act of 1990 at the statewide general election on November 6, 1990.

SEC. 9. (a) Upon written certification by the Board of Supervisors of the County of Butte to the Director of Finance and the Controller that the Board of Supervisors has by resolution requested

that funds be withheld from annual subventions, the Controller shall annually withhold, with the first withholding occurring on December 31, 1991, and the final withholding occurring December 31, 2000, two hundred thirty thousand dollars ($230,000), plus an amount calculated pursuant to subdivision (b), from the following subventions to the County of Butte in the following sequence:

(1) The Cigarette Tax Fund subventions, pursuant to Chapter 9 (commencing with Section 30461) of Part 13 of Division 2 of the Revenue and Taxation Code.

(2) Open-space subventions, pursuant to Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2 of the Government Code.

(3) Trailer coach fee subventions, pursuant to subdivision (d) of Section 11005 of the Revenue and Taxation Code.

(4) The sequence provided in paragraphs (1) to (3), inclusive, shall be applied so that reductions in subventions under paragraph (2) are not utilized until all available reductions under paragraph (1) have been made, and so that subventions under paragraph (3) are not utilized until all available reductions under paragraphs (1) and (2) have been made.

(b) The Controller shall calculate interest, at the rate earned by the Pooled Money Investment Account, on the remaining balance of the amount determined pursuant to subdivisions (a) and (c) prior to making any reduction in subventions for the purposes of this section.

(c) The sums withheld from the subventions to the County of Butte pursuant to subdivision (a), less the amounts calculated pursuant to subdivision (b), and any moneys paid by the County of Butte for the cost of the firefighting services described in paragraph (4) of subdivision (a) of Section 6, shall annually and proportionately reduce the amount calculated pursuant to subdivision (a).

SEC. 10. The Legislature finds and declares that, due to the unique circumstances cited in subdivision (a) of Section 6 of this act regarding the County of Butte, a general statute cannot be made applicable within the meaning of Section 16 of Article IV 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:

So that vitally needed funds may be available to the County of Butte as soon as possible during the 1990–91 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1259

An act to add Section 19441.2 to the Business and Professions Code, relating to horseracing.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 19441.2 is added to the Business and Professions Code, to read:

19441.2. In its annual report required under Section 19441, the board shall include a tabulation of injuries, fatalities, and comparative accident rates for all racing and training venues within its jurisdiction. The report shall also include recommendations concerning the worker safety impacts of improvements in racetrack design, jockey equipment, racing procedures, and track and facility maintenance.

CHAPTER 1260

An act to amend Section 19602 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 19602 of the Business and Professions Code is amended to read:

19602. (a) Notwithstanding any other provision of law, any racing association in this state may authorize betting systems located outside of this state to accept wagers on a race or races conducted by that association and may transmit live audio visual signals of the race or races and their results to these betting systems, except that any authorization is subject to applicable federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(b) Any racing association described in subdivision (a), when it authorizes betting systems located outside of this state to accept wagers on a race, shall pay a license fee to the state in an amount equal to 10 percent of the total amount received by the association from the out-of-state betting system. However, if the out-of-state betting system is a parimutuel betting system, the association shall pay to the state either 10 percent of the total amount received by the

association or one-half of 1 percent of the handle, whichever is greater. The remaining amount received by the association shall be distributed to the association which conducts the racing meeting and to horsemen participating in that racing meeting as follows: 50 percent to the association as commissions and 50 percent to the horsemen as purses. All rents, costs, and fees shall be deducted pursuant to a contract between the association which conducts the racing meeting and the horsemen participating in the racing meeting.

(c) With the permission of the board, wagers accepted by betting systems located outside of this state may be, but are not required to be, included in the parimutuel pool of the association which conducts the racing meeting in this state. If the wagers accepted by betting systems located outside of this state are included in the parimutuel pool of the association which conducts the racing meeting in this state, the betting system located outside of this state shall, if permissible under applicable law, deduct from the total amount handled in each conventional and exotic parimutuel pool the same total percentages deducted pursuant to Article 9.5 (commencing with Section 19610) by the association which conducts the racing meeting in this state. If the laws of the jurisdiction in which the betting system is located do not permit the betting system to deduct the same percentages as are deducted by the association which conducts the racing, the board may, nonetheless, permit the inclusion of those out-of-state wagers in the association's parimutuel pool if the board determines it to be in the public interest of this state to do so.

(d) If wagers accepted by an association conducting racing within the state and wagers accepted by a betting system located outside of the state are combined in one parimutuel pool and the association and the betting system both deduct the same total percentages as set forth in subdivision (c), the breakage shall be allocated between the association and the betting system on the basis of a calculation for distribution approved by the board.

(e) If wagers accepted by an association conducting racing within the state are combined in one parimutuel pool with wagers accepted by a betting system located outside the state and the association and the betting system deduct different percentages from the amount handled in the parimutuel pool, the precise calculation and distribution of payments on winning tickets and breakage between the association and the betting system shall be on the basis of a calculation for distribution approved by the board.

(f) The board shall report to the Department of Finance whenever it approves a calculation for distribution pursuant to subdivision (d) or (e) and the projected impact of that calculation, if any, on state revenues.

(g) Breakage allocated pursuant to this section to an association conducting racing within this state shall be distributed in the same manner as would be breakage arising from wagers at the association

in the absence of a combined parimutuel pool. This section does not apply to the disposition of breakage allocated to the betting system located outside of the state.

(h) If wagers accepted by a betting system located outside of this state are included in the parimutuel pool of an association conducting racing in this state, funds in the parimutuel pool attributable to unclaimed tickets relating to wagers accepted by the association conducting racing within the state shall be distributed in the same manner as unclaimed tickets relating to wagers accepted by that association in the absence of a combined parimutuel pool. Funds in the parimutuel pool attributable to unclaimed tickets related to wagers accepted by the betting system located outside of this state shall be allocated to that betting system, and this section does not otherwise apply to the disposition of those funds at that location outside of the state.

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

In order for this act to take effect and apply during the 1990 horseracing season, it is necessary that this act take effect immediately.

CHAPTER 1261

An act to amend Sections 17717.5 and 42250.1 of, to add Sections 17717.7 and 17746.8 to, to add Article 3 (commencing with Section 42260) to Chapter 7 of Part 24 of, and to repeal Sections 42250, 42250.2, and 42250.3 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 17717.5 of the Education Code is amended to read:

17717.5. (a) The board may approve, in whole or in part, an application submitted by a school district under Section 17717 or 17720 in an amount not exceeding the amount applied for as the board may deem appropriate.

(b) The board may, upon approval of the application, in whole or in part, and subsequently from time to time, make additional approvals not exceeding in the aggregate the total amount determined by the board under subdivision (a) for the portion or portions of the project for which the board determines the district is ready to proceed.

(c) Whenever a district files an application, the board shall require the district to submit a five-year plan for construction and rehabilitation of school facilities. The plan shall include, but not be limited to, facility need, type, and grade level, and a description of the district's compliance with Section 17722. The plan may be adjusted to reflect adjusted growth targets.

(d) The board shall not approve any application under this chapter after January 1, 1990, unless accompanied by a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district or in overcrowded high school attendance areas by at least 20 percent.

(e) The board may waive subdivision (d) or the requirements of Section 17717.7, or both, if a school district demonstrates that these requirements will result in a particular educational or financial hardship to the district. Further, the board shall waive subdivision (d), if it finds that there is clear hardship to a district due to declining enrollment or no growth.

SEC. 2. Section 17717 7 is added to the Education Code, to read:

17717.7. Priority for the approval of project funding for new construction under this chapter, shall be as follows:

(a) First priority for construction funds shall be given to school districts with a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project that would be constructed to operate on a multitrack year-round basis.

(b) Second priority shall be for school districts with a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(c) Third priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for 50 percent of the cost of a project to operate on a multitrack year-round basis.

(d) Fourth priority shall be for school districts without a substantial enrollment in multitrack year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multitrack year-round basis.

(e) Fifth priority shall be for districts with a substantial enrollment in multitrack year-round schools requesting state funding for one-half of the cost of a project that would not operate on a multitrack year-round basis.

(f) Sixth priority shall be for districts with a substantial enrollment in multitrack year-round schools requesting full state funding for a project that would not operate on a multitrack year-round basis.

(g) The board shall not restrict the availability of funding for construction of multitrack year-round schools, from any funding source available to the State School Building Lease-Purchase Fund, but shall make approval of project funding for those projects the first

priority, in accordance with this section.

"Substantial enrollment," for the purposes of this section, means enrollment of at least 30 percent of district pupils in kindergarten or any of the grades 1 to 6, inclusive, or 40 percent of pupils in the high school attendance area for which the school district is applying for new facilities.

Notwithstanding the provisions of this section, the State Allocation Board may continue to implement any year-round school priority provisions for hardships adopted prior to September 1, 1990.

SEC. 3. Section 17746.8 is added to the Education Code, to read:

17746.8. Notwithstanding any other provisions of law, the maximum allowable building area for each applicant district shall be reduced by the product of the maximum area per attendance unit calculated for each appropriate grade level and the number of pupils reported by the Superintendent of Public Instruction for that grade level pursuant to Section 42268. This reduction shall be calculated on the basis, at the district's option, of either the district as a whole or the appropriate attendance area, as defined in Section 17741.

SEC. 4. Section 42250 of the Education Code is repealed.

SEC. 5. Section 42250.1 of the Education Code is amended to read:

42250.1. (a) From funds appropriated by the Legislature for this purpose for any fiscal year, the board shall allocate to school districts selected by the board pursuant to this section, funding for the expenses of air-conditioning equipment and insulation materials, and for the costs of installing the equipment and materials, for schools operating in the current fiscal year or planning to operate in the subsequent fiscal year on a year-round or continuous basis pursuant to Chapter 3 (commencing with Section 37400), Chapter 4 (commencing with Section 37500), or Chapter 5 (commencing with Section 37600) of Part 22.

(b) The State Allocation Board shall allocate the funds appropriated under subdivision (a) only to those school districts in which a high percentage of the pupils, or a significant number of the pupils, are enrolled in the current fiscal year or will be enrolled in the subsequent fiscal year in year-round or continuous schools as described in subdivision (a). The board shall grant preference in the allocation of those funds to those year-round or continuous schools that are both situated in climates that require air-conditioning and insulation during June, July, and August, and have a high percentage of overcrowding of pupils. In addition, all schools participating in the demonstration program provided pursuant to Chapter 2.5 (commencing with Section 37300) of Part 22 and satisfying the criteria set forth in this subdivision shall be eligible to receive, and given priority for, the maximum allocation of funds under this section.

(c) Whenever a school district has received an allocation pursuant to this section for a school that was scheduled to begin operating year-round in the subsequent fiscal year but that did not begin

operating year-round in that fiscal year, the school district shall repay the amount allocated with interest to the State School Building Fund.

SEC. 6. Section 42250.2 of the Education Code is repealed.

SEC. 7. Section 42250.3 of the Education Code is repealed.

SEC. 8. Article 3 (commencing with Section 42260) is added to Chapter 7 of Part 24 of the Education Code, to read:

Article 3. Year-round School Grant Program

42260. (a) There is hereby established the Year-round School Grant Program to provide financial assistance to both school districts implementing new multitrack year-round educational programs and school districts that currently operate those programs.

(b) The grant program shall be administered by the Superintendent of Public Instruction. The superintendent shall award grants separately under this article for the implementation of multitrack year-round school programs and for year-round operations purposes.

(c) The Superintendent of Public Instruction shall establish criteria for the selection of grant applicants to be funded. The criteria shall include, but not be limited to, all of the following:

(1) Severity of school district overcrowding in excess of State Allocation Board or court-mandated pupil loading standards.

(2) The amount of overcrowding that would be alleviated by the implementation of multitrack year-round educational programs, as proposed in the school district's grant application proposal.

(3) The lack of other educationally sound alternatives to multitrack year-round educational programs to reduce overcrowding in the applicant school district.

42261. Commencing in the 1990–91 fiscal year, a school district may apply for a year-round school grant pursuant to this article, if the school district demonstrates to the Superintendent of Public Instruction all of the following:

(a) There is substantial overcrowding in the school district or its high school attendance areas, as demonstrated by current enrollment, capacity of facilities, and growth projections.

(b) The school district will use the grant to implement or operate multitrack year-round educational programs in one or more of its schools in order to increase the capacity of its facilities.

(c) The school district would be eligible to construct new facilities under Chapter 22 (commencing with Section 17700) of Part 10 absent the use of multitrack year-round educational programs.

42262. (a) Year-round school grants awarded under this article for purposes of the implementation of multitrack year-round school programs shall be expended for the following purposes:

(1) Planning, including community activities, necessary for that implementation.

(2) One-time minor capital outlay and equipment associated with converting school facilities to multitrack year-round operation.

(3) Deferred maintenance on facilities proposed for multitrack year-round operation.

(4) Other necessary activities associated with conversion to multitrack year-round operations, including, but not limited to, curriculum revision and scheduling changes and staff development.

(b) These implementation grants are available on a one-time basis for each new multitrack year-round schoolsite, subject to application approval, in an amount up to twenty-five dollars ($25) per pupil currently enrolled in the site planned for year-round operation. The superintendent may approve all or any portion of an application for an implementation grant, as described in subdivision (a) of this section, up to a maximum of one hundred thousand dollars ($100,000) per schoolsite. If the applications submitted exceed the appropriations available for this purpose, the amount per pupil shall be prorated by an equal amount.

42263 (a) Commencing in the 1990–91 fiscal year, year-round school grants, in addition to those grants authorized under Section 42262, shall be awarded annually for the operation of multitrack year-round education programs to school districts that meet the criteria specified in this section, in addition to the criteria otherwise applicable under this article.

(b) For each fiscal year, for each schoolsite for which a school district applies for funding under this article, the district shall certify the number of pupils in excess of the capacity of the schoolsite, as determined by State Allocation Board or court-mandated pupil loading standards, for which the district elects to claim funding under this article. A school district shall be eligible for funding under this section only as to any schoolsite for which the pupil population certified by the district exceeds the capacity of the schoolsite by not less than 5 percent.

(c) To the extend funding is made available for the purposes of this section, the Superintendent of Public Instruction shall allocate to an applicant school district, for each schoolsite that qualifies for funding under subdivision (b), an amount equal to the district's share of the product of the statewide average cost avoided per pupil, as established under subdivision (e), and the number of pupils certified by the district under subdivision (b). For purposes of this subdivision, a district's share shall be determined according to the percentage by which the number of certified pupils reflects an increase in the capacity of the schoolsite, as follows:

	District's Share
1. Less than 5%	0%
2. Equal to or greater than 5% but less than 10%	50%
3. Equal to or greater than 10% but less than 15%	67%
4. Equal to or greater than 15% but less than 20%	75%

5. Equal to or greater than 20% but less than 25%	85%
6. Equal to or greater than 25%	90%

(d) (1) The State Allocation Board shall calculate the statewide average cost avoided per pupil under Chapter 22 (commencing with Section 17700) of Part 10 through the operation of school facilities on a multitrack year-round basis, based on the following school facilities cost components:

(A) The cost of facilities construction.

(B) The cost of land acquisition.

(C) Relocation costs in connection with land acquisition.

(D) State costs incurred as a result of interest that would be paid by the state for debt service on state general obligation bond financing to construct new school facilities under Chapter 22 (commencing with Section 17700) of Part 10.

(2) The calculation of costs under subparagraphs (B) and (C) of paragraph (1) shall exclude data from the lowest quartile and the highest quartile.

(3) The State Allocation Board shall calculate the statewide average cost avoided per pupil, pursuant to this subdivision, on the basis of the 1990–91 and 1991–92 fiscal years and every two-year period thereafter. No later than December 1, 1992, and biennially thereafter, the board shall report to the Legislature the result of its calculation for the prior two-year period.

(e) For the 1990–91 and 1991–92 fiscal years, the "statewide average cost avoided per pupil," for purposes of this section, shall be one thousand one hundred fifty-one dollars ($1,151). For the 1992–93 fiscal year, and each fiscal year thereafter, the "statewide average cost avoided per pupil" shall be established by the statute that appropriates funding for the purposes of this section for that fiscal year.

42265. Notwithstanding subdivision (b) of Section 42260, a district that applies for funding for the first year of operation of a schoolsite on a multitrack year-round basis shall be eligible for funding to the extent that the estimated pupil population certified by the district exceeds the capacity of the schoolsite by not less than 5 percent, regardless of whether or not the actual pupil population is subsequently determined to meet or exceed that excess capacity standard. The reduction of building area eligibility required under Section 17746.8 shall apply on the basis of the estimated, rather than the actual, pupil population certified by the district for that year of operation.

42266. (a) The funding allocated by the Superintendent of Public Instruction pursuant to Section 42263 shall be allocated in accordance with paragraph (5) of subdivision (a) of Section 14041.

(b) Commencing with the 1991–92 fiscal year, the entire amount of funding to be allocated pursuant to Section 42261 for each fiscal year shall be allocated no later than December 31 of that fiscal year.

42267. (a) Each school district that receives funding for a schoolsite pursuant to Section 42263 for any fiscal year shall report to the Superintendent of Public Instruction, no later than June 30 of that fiscal year, the number of pupils enrolled for the schoolsite in excess of the capacity of the schoolsite, as determined by State Allocation Board or court-mandated pupil loading standards.

(b) The amount of funding otherwise calculated for a schoolsite for any fiscal year pursuant to Section 42263 shall be reduced by the superintendent to reflect the extent to which the number of pupils certified for that schoolsite for the prior fiscal year is greater than the number of pupils in excess of the capacity of the schoolsite for that prior fiscal year. If the amount of that reduction exceeds the funding entitlement for that schoolsite for the current fiscal year, the superintendent shall reduce the first principal apportionment to that school district in the current fiscal year by the amount of that excess.

(c) If the number of pupils certified for a schoolsite for the prior fiscal year is less than the number of pupils in excess of the capacity of the schoolsite for that prior fiscal year, the school district may elect to increase accordingly the number of pupils it certifies for the prior fiscal year. In that event, the superintendent shall increase the district's funding entitlement under Section 42263 for the schoolsite for the current fiscal year, and the district's building area eligibility under Chapter 22 (commencing with Section 17700) shall be reduced accordingly pursuant to Section 17746.8.

42268. (a) Commencing on July 1, 1991, the Superintendent of Public Instruction shall annually report to the State Allocation Board, for the purposes of Section 17746.8, the number of pupils in excess of capacity certified by the district pursuant to subdivision (b) of Section 42263, or the number of pupils prescribed by subdivision (b) of this section, whichever is greater.

(b) In the first year of funding for a schoolsite under Section 42263, if the number of pupils certified in excess of the capacity of the schoolsite is less than 5 percent of capacity, the number of pupils reported by the superintendent shall be equal to 5 percent of capacity. In the second year of that funding, if the number of pupils certified in excess of the capacity of the schoolsite is less than 10 percent of capacity, the number of pupils reported by the superintendent shall be equal to 10 percent of capacity. In the third, and each subsequent year of that funding, if the number of pupils certified in excess of the capacity of the schoolsite is less than 15 percent of capacity, the number of pupils reported by the superintendent shall be equal to 15 percent of capacity.

(c) Notwithstanding subdivision (a), for a schoolsite for which a school district received year-round incentive funding for the 1989–90 fiscal year pursuant to former Section 42250.3, the superintendent shall report for the 1991–92 fiscal year the number of pupils equal to 10 percent of capacity of the site, or the number of pupils in excess of capacity certified pursuant to subdivision (b) of Section 42263, whichever is greater and for the 1992–93 fiscal year the number of

pupils equal to 15 percent of capacity of the site, or the number of pupils in excess of capacity claimed pursuant to subdivision (b) of Section 42263, whichever is greater.

SEC. 9. (a) For schoolsites for which a school district claimed year-round incentive funding for the 1989–90 fiscal year pursuant to former Section 42250.3, the Superintendent of Public Instruction shall allocate to that school district for the 1990–91 fiscal year the same amount allocated to the district pursuant to Section 42250.3 in the 1989–90 fiscal year, if the district documents that it has at least the same number of pupils in excess of capacity in schools operating on multitrack year-round schedules for which the district claimed funding in the 1989–90 fiscal year.

(b) The amount specified in subdivision (a) shall be reduced if a district has a smaller number of pupils in excess of capacity in schools operating on multitrack year-round schedules for which incentives were claimed in the 1989–90 fiscal year than it had in the 1989–90 fiscal year. The reduction shall be in direct proportion to the reduction in the percentage of pupils in excess of capacity.

SEC. 10. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the administrative costs associated with the implementation of this act during the 1990–91 fiscal year.

SEC. 11. The Superintendent of Public Instruction shall develop an implementation plan for this act by March 15, 1991, in consultation with the Department of Finance and the Office of Local Assistance, which shall be subject to approval by the Director of Finance.

SEC. 12. Any project for which an application was approved by the State Allocation Board pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code), prior to January 1, 1991, shall continue to be governed by that law as it read immediately prior to the effective date of this act.

SEC. 13. The sum of twenty-seven million dollars ($27,000,000) is hereby appropriated from the General Fund to Section A of the State School Fund for allocation by the Superintendent of Public Instruction to school districts for year-round school incentive payments pursuant to Section 9 of this act.

SEC. 14. It is the intent of the Legislature that funding for the purposes of this act be appropriated annually in the Budget Act.

CHAPTER 1262

An act to add Section 14904 to, and to add Chapter 10 (commencing with Section 46000) to Division 17 of, the Food and Agricultural Code, and to amend Section 26850.5 of, to add Article 4.5 (commencing with Section 26569.20) to Chapter 5 of Division 21 of, and to repeal Sections 26469, 26569.11, 26569.12, 26569.13, 26569.15, 26569.16, and 26569.17 of, the Health and Safety Code, relating to food.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 25, 1990]

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

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

(a) An increasing amount of food sold in California is advertised, labeled or otherwise represented using descriptive terms such as "organic," "organically grown," "naturally grown," "ecologically grown," or "biologically grown," or variations of those terms. This food often commands premium prices throughout the distribution chain.

(b) In order to provide for the protection of the consumer, other buyers of organic food throughout the distribution chain, and the producers of organic food within this state, it is necessary that standards relating to the producing, processing, handling, and labeling of food sold as organic be clarified, and that these standards be strictly enforced.

(c) Clarification and strict enforcement of standards related to food sold as organic will foster confidence in the integrity of this food, protect consumers, promote use of sustainable agricultural techniques, and facilitate the development of both in-state and out-of-state markets for California food that has been organically produced and certified.

(d) Establishment of an Organic Food Advisory Board is necessary for the efficient development and management of an organic foods industry in the state, and essential to carrying out the purposes of this act.

SEC. 2. Section 14904 is added to the Food and Agricultural Code, to read:

14904. The director shall adopt and enforce regulations for the manufacture, distribution, and labeling of feed used in connection with the production of food sold as organic pursuant to Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code which shall be consistent with the requirements of that article.

SEC. 2.5. Chapter 10 (commencing with Section 46000) is added to Division 17 of the Food and Agricultural Code, to read:

CHAPTER 10. ORGANIC FOODS

46000. (a) The director and county agricultural commissioners under the supervision and direction of the director shall enforce the provisions of Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code applicable to producers of food sold as organic, handlers of raw agricultural commodities sold as organic, and eggs sold as organic, handlers and processors of meat, fowl, and dairy products sold as organic, and retailers of food sold as organic.

(b) The director and county agricultural commissioners under the supervision and direction of the director shall also enforce the provisions of Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code applicable to certification organizations which certify food sold as organic under the enforcement jurisdiction of the director pursuant to subdivision (a).

(c) The director may adopt any regulations as are reasonably necessary to implement his or her enforcement responsibilities as specified in Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code and in this chapter.

46002. (a) On or after March 1, 1991, every person engaged in this state in the production or handling of raw agricultural commodities or eggs sold as organic, or in the production, handling, or processing of meat, fowl, and dairy products sold as organic, excluding retailers of food sold as organic, shall have registered with the agricultural commissioner in the county of principal operation prior to the first sale of the food, and shall thereafter annually renew the registration unless no longer engaged in the activities requiring the registration. Each registrant shall provide a complete copy of its registration to the agricultural commissioner in any county in which the registrant operates.

(b) Registration pursuant to this section shall be on a form provided by the department and shall be valid for a period of one calendar year from the date of validation by the department or county agricultural commissioner of the completed registration form. The director shall make forms available for this purpose on January 1, 1991.

(c) The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the specific commodities produced, handled, or processed which are sold as organic.

(2) For producers, a map showing the precise location and dimensions of the facility or farm where the commodities are produced. The map shall also describe the boundaries of the production area and all adjacent land uses, shall assign field numbers to distinct fields or management units, and shall describe the size of

each field or management unit.

(3) Sufficient information, under penalty of perjury, to enable the director or county agricultural commissioner to verify the amount of the registration fee to be paid in accordance with subdivision (e).

(4) The names of all certification organizations or governmental entities, if any, providing certification pursuant to Sections 26569.30 to 26569.34, inclusive, of the Health and Safety Code.

(5) In the case of producers, for each field or management unit, a list of all substances applied to the crop, soil, growing medium, growing area, irrigation or postharvest wash or rinse water, or seed, including the source of the substance, the brand name, if any, the rate of application, and the total amount applied in each calendar year, for at least the applicable time periods specified in subdivision (a) of Section 26569.22 of the Health and Safety Code.

(d) The registration form shall include a separate "public information sheet" which shall include:

(1) The name and address of the registrant.

(2) The nature of the registrant's business, including the specific commodities produced, handled, or processed which are sold as organic.

(3) The names of all certification organizations or governmental entities providing certification pursuant to Sections 26569.30 to 26569.34, inclusive, of the Health and Safety Code.

(e) A registration form shall be accompanied by payment of a nonrefundable registration fee as follows:

(1) For producers, a fee based on gross sales by the registrant of food sold as organic in the calendar year which precedes the date of registration, or if no sales were made in the preceding year, then based on the expected sales during the 12 calendar months following the date of registration, according to the following schedule:

Gross Sales	Registration Fee
$ 0 - 10,000	$ 25
$ 10,001 - 25,000	$ 75
$ 25,001 - 50,000	$ 100
$ 50,001 - 100,000	$ 175
$ 100,001 - 250,000	$ 300
$ 250,001 - 500,000	$ 450
$ 500,001 - 1,000,000	$ 750
$1,000,001 - 2,500,000	$1,000
$2,500,001 - 5,000,000	$1,500
$5,000,001 and above	$2,000

(2) For handlers and processors subject to the enforcement jurisdiction of the director pursuant to Section 46000, the director shall establish a fee schedule to cover the reasonable, additional costs of administration and enforcement pursuant to this chapter in conjunction with other enforcement responsibilities of the director and the county agricultural commissioners funded from other

sources. The fee for registration of handlers and processors subject to the enforcement jurisdiction of the director shall not exceed two thousand dollars ($2,000).

The director shall publish annually a list of the fee schedule for each registration governed by this chapter. The setting of fees pursuant to this subdivision 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.

(f) To the extent feasible, the director shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.

(g) The director or county agricultural commissioner shall reject a registration submission which is incomplete or not in compliance with this chapter and with Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code.

(h) A registrant shall immediately notify the director of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than that previously paid.

(i) At the request of any person, the "public information sheet" described in subdivision (d) for any registrant shall be made available for inspection and copying at the main office of the department and each county agricultural commissioner. Copies of the "public information sheet" shall also be made available by mail, upon written request. The director or commissioner may charge a reasonable fee for the cost of reproducing a "public information sheet." Except as described in this subdivision, a registration form shall be exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(j) The requirements of this section shall not apply to retailers of food sold as organic.

46003. (a) The director shall establish an advisory board, which shall be known as the Organic Food Advisory Board, for the purpose of advising the director in his or her responsibilities under this chapter and Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code.

(b) The advisory board shall be comprised of 13 members. Six members shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. One member shall be a processor, one member shall be a handler or a retailer, two members shall be consumer representatives, one member shall be an environmental representative, and two members shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science. Except for the consumer, environmental, and technical representatives, the members of the advisory board shall have derived a substantial portion of their business income, wages, or salary from the production, handling, processing, or retailing of food sold as organic for at least three years preceding their appointment to the advisory board. The consumer

and environmental representatives shall not have a financial interest in the organic food industry and shall be representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The technical representatives shall not have a financial interest in the organic food industry.

(c) The State Director of Health Services, or his or her representative, and a county agricultural commissioner shall be appointed as ex officio members of the advisory board.

46003.5. On or before January 1, 1993, the director, in consultation with the Organic Food Advisory Board, shall adopt regulations listing specific substances which are in compliance or not in compliance with the definition of "prohibited materials," as defined in subdivision (p) of Section 26569.21 of the Health and Safety Code, for use in the production and handling of organic foods.

These regulations should conform to any federal law or regulation governing materials allowed or disallowed for use on food sold as organic to the greatest extent possible.

Prior to the adoption of these regulations, the director shall, by March 31, 1991, issue administratively a preliminary, non exhaustive list of materials which are in compliance or not in compliance with subdivision (p) of Section 26569.21 of the Health and Safety Code based on the listings of permitted materials published by California Certified Organic Farmers, the Organic Foods Production Association of North America, and the Departments of Agriculture of the States of Oregon and Washington.

46004. (a) Any person may file a complaint with the director concerning suspected noncompliance with Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code, by a person under the enforcement jurisdiction of the director as provided in Section 46000.

(b) The director shall establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other food, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.

(c) The director may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint which does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.

46005. The director and the county agricultural commissioners may conduct a program of spot inspections of persons required to register pursuant to Section 46002 to verify continuing compliance with this chapter and Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code, according to uniform procedures established by the director.

46006. At the request of a county agricultural commissioner, the district attorney for that county may bring an action to enforce this chapter or Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code, within the enforcement jurisdiction of that commissioner.

46007. (a) In lieu of prosecution, the director or a county agricultural commissioner may levy a civil penalty against any person under the enforcement jurisdiction of the director as provided in Section 46000 who violates Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code, or any regulation adopted pursuant thereto or pursuant to this chapter, in an amount not more than five thousand dollars ($5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the director or county agricultural commissioner finds that a violation was not intentional, the director or county agricultural commissioner may levy a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b), the director or county agricultural commissioner may issue a notice of violation if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director or county agricultural commissioner, upon request made within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's or commissioner's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the decision of the director or commissioner may be sought by any person pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the director or commissioner.

(f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state. A civil penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county.

(g) The director shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all civil penalties levied by the director and by each county agricultural commissioner within the past five years, including the

amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the director.

46008. On or before January 1, 1994, the director, in consultation with the county agricultural commissioners and in cooperation with the State Director of Health Services, shall prepare a report to the Legislature describing enforcement activities under this chapter and Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code, and containing recommendations regarding the need for, and means of, improved enforcement of that article and this chapter. The report shall include an analysis of the adequacy of fees collected pursuant to this chapter.

46009. (a) On or after January 1, 1992, a certification organization which certifies raw agricultural commodities, eggs, meat, fowl, or dairy products sold as organic shall have registered with the director and shall thereafter annually renew the registration unless no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the director, shall include the filing of a certification plan as specified in Section 26569.33 of the Health and Safety Code, and payment of the fee specified in subdivision (b). The registration form shall contain the names of all persons involved in making certification decisions or setting certification standards for the certification organization. The director shall reject a registration submission that is incomplete or not in compliance with this chapter and with Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code. The director shall make forms available for this purpose on or before July 31, 1991.

(b) The director shall supervise all certification organizations registered with the department, shall establish a complaint procedure concerning noncompliance with this chapter or Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code by certification organizations registered with the department, and shall establish and collect an annual registration fee based on the acreage, unit of weight or measurement, number of head, gross sales, or other measure of the amount of food certified by the organization, to cover the costs of the supervision. The registration fee may not exceed two thousand dollars ($2,000) per organization. Supervision shall include a written evaluation of the organization's certification plan at least biannually, which shall be made available for public inspection. The director shall have the authority to audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the director.

(c) On or after July 31, 1991, the director and the county agricultural commissioners under the supervision of the director shall, if requested, establish a voluntary certification program for

producers of organic food and processors of organic meat, fowl, and dairy products under the enforcement jurisdiction of the director. This program shall meet all of the requirements of Sections 26569.31 to 26569.34, inclusive, of the Health and Safety Code. The director shall establish a fee schedule, which may include a late payment penalty, for participants in this program which covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program which covers all of the agricultural commissioner's reasonable costs of the program. The director may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program.

(d) This chapter shall apply to all food sold as organic within the state, wherever produced, handled, or processed, and to all food produced, handled, or processed in the state, wherever sold as organic, except that in lieu of certification under this chapter, the director may recognize a certification program operating outside of the state which certifies raw agricultural commodities, eggs, meat, fowl, or dairy products if the director determines that such program meets minimum standards substantially similar to those contained in subdivision (c) of Section 26569.30, and Sections 26569.32 to 26569.34, inclusive, of the Health and Safety Code.

46010. This chapter shall be interpreted in conjunction with Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code.

46010.5. No fee established and collected pursuant to this chapter shall exceed the department's costs or the county agricultural commissioner's costs, as the case may be, of regulating and enforcing the provisions of this chapter related to the function for which the fee is established.

46011. Any fees and penalties collected by the director pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation by the Legislature, shall be expended to fulfill the responsibilities of the director as specified in this chapter. Any fees and penalties collected by a county agricultural commissioner pursuant to subdivision (c) of Section 46009 shall be expended to fulfill the responsibilities of the county agricultural commissioner, as specified in this chapter.

SEC. 3. Section 26469 of the Health and Safety Code is repealed.

SEC. 4. Section 26569.11 of the Health and Safety Code is repealed.

SEC. 5. Section 26569.12 of the Health and Safety Code is repealed.

SEC. 6. Section 26569.13 of the Health and Safety Code is repealed.

SEC. 7. Section 26569.15 of the Health and Safety Code is repealed.

SEC. 8. Section 26569.16 of the Health and Safety Code is

repealed.

SEC. 9. Section 26569.17 of the Health and Safety Code is repealed.

SEC. 10. Article 4.5 (commencing with Section 26569.20) is added to Chapter 5 of Division 21 of the Health and Safety Code, to read:

Article 4.5. The California Organic Foods Act of 1990

26569.20. This article shall be known, and may be cited as, the California Organic Foods Act of 1990.

26569.21. The following words and phrases, when used in this article, shall have the following meanings:

(a) "Administered" means ingested, injected, or otherwise topically or internally introduced to livestock, fowl, or fish.

(b) "Applied" means introduced, incorporated within, added to, or placed upon any seed, crop, plant, livestock, fowl, fish, soil, or growing medium, and shall also mean used in, on, or around any facility or area in which food is kept.

(c) "Area" means the physical space surrounding food where there is more than a negligible chance of a prohibited material being absorbed by, incorporated into, or adhered to the food, soil or growing medium. The area may differ significantly depending on the circumstances. Except in the case of the production of food, area shall not include any physical space surrounding food if an intervening event, such as the use of a cleaning method for processing equipment, or the passage of time, has made the chance of a prohibited material being absorbed by, incorporated into, or adhered to the food, negligible.

(d) "Botanicals" means substances derived solely from plants or plant parts.

(e) "Endemic disease" means a disease in animal or fish which is either universal or common to a species within the geographic region.

(f) "Enforcement authority" means the governmental unit with primary enforcement jurisdiction, as provided in Section 26569.44.

(g) "Field" means a contiguous area of land for agricultural production which is managed with a consistent set of production methods.

(h) "Feed" means any substance used or intended for consumption by livestock, fowl, or fish to provide nourishment, including range and pasturage vegetation.

(i) "Growing medium" means a substance that provides nutrients for plants or fungi but which is separate from the land surface of the world.

(j) "Handled" means shipped, packed, repacked, sold for resale, warehoused, wholesaled, imported into the state, or stored by other than a grower, producer, processor, or retailer of that food.

(k) "Management unit" means the physical facilities and

equipment associated with crop production which is not confined to a field, such as animal production, greenhouse production, or seed sprouting. Management units shall be described by the location and function of the physical facilities and equipment, and other aspects as determined by the enforcement authority. In the case of animal production, the management units shall also be described by the quantity and source of each group of animals that is managed together as a unit.

(*l*) "Processed" means cooking, baking, heating, drying, mixing, grinding, crushing, pressing, churning, separating, extracting juices or other materials, peeling, fermenting, eviscerating, preserving, dehydrating, freezing, or manufacturing which materially alters the flavor, keeping quality, or any other property, or the making of any substantial change of form. "Processed" does not include refrigeration at temperatures which are above the freezing point nor any other treatment which merely retards or accelerates the natural processes of ripening or decomposition.

(m) "Produced" means grown, raised, harvested, handled, or stored under the control of the grower or producer.

(n) "Producer," "handler," and "processor" means any person who has, respectively, produced, handled, or processed any food.

(o) "Production," "handling," and "processing" means the process by which any food is, respectively, produced, handled, and processed.

(p) "Prohibited materials" means any of the following:

(1) When used in connection with the production, handling, or processing of meat, fowl, or fish:

(A) Any drug, medication, hormone or growth regulator, whether or not synthetic, or any other synthetic substance, including, but not limited to, any substance administered to stimulate or regulate growth or tenderness, and any subtherapeutic dose of antibiotic. The use of a drug or medication for medical treatment of a specific and manifest malady diagnosed and prescribed by a licensed veterinarian, or under the general supervision of a licensed veterinarian, shall be permitted, but not within 90 days prior to slaughter or twice the withdrawal time specified by the federal Food and Drug Administration, whichever is longer. In addition, vaccines may be administered for prevention of an endemic disease or as required by law. Vitamin and mineral supplements also may be administered.

(B) Any feed administered to livestock, fowl, or fish that does not comply with the requirements of regulations adopted pursuant to Section 14904 of the Food and Agricultural Code.

(C) Any artificial rumen stimulants, such as plastic pellets.

(D) Any manure intentionally fed or refed.

(E) Any synthetically compounded substance applied postslaughter to the meat, fowl, or fish itself, or to its packaging, including preservatives.

(F) Any substance applied to any area where livestock, fowl, or

fish or meat, fowl, or fish products are handled or kept at any time that does not consist entirely of microorganisms, microbiological products, or substances consisting of, or derived or extracted solely from, plant, animal, or mineral-bearing rock substances. Prohibited materials shall not include the application of botanicals, lime-sulfur, gypsum, soaps, and detergents. Prohibited materials shall include the application of petroleum solvents, diesel, and other petroleum fractions.

(2) When used in connection with the production, distribution, or processing of dairy products or eggs:

(A) Any drug, medication, hormone, or growth regulator, whether or not synthetic, and any other synthetic substance, including, but not limited to, any substance administered to stimulate or regulate growth, milk or egg production, and any subtherapeutic dose of antibiotic. The use of a drug or medication for medical treatment of a specific and manifest malady diagnosed and prescribed by a licensed veterinarian, or under the general supervision of a licensed veterinarian, shall be permitted, but not less than 30 days prior to taking of the milk or laying of eggs, or twice the withdrawal time specified by the federal Food and Drug Administration, whichever is longer. In addition, vaccines may be administered for prevention of an endemic disease or as required by law. Vitamin and mineral supplements may also be administered.

(B) Any feed administered to livestock within one year of the taking of the milk, or to fowl within six months of the laying of eggs, that does not comply with the requirements of regulations adopted pursuant to Section 14904 of the Food and Agricultural Code.

(C) Any artificial rumen stimulants, such as plastic pellets.

(D) Any manure intentionally fed or refed.

(E) Any substance applied to any area where livestock, fowl, or fish, or meat, dairy, fowl, or fish products are handled or kept at any time that does not consist entirely of microorganisms, microbiological products, or substances consisting of, or derived or extracted solely from, plant, animal, or mineral-bearing rock substances. Prohibited materials shall not include the application of botanicals, lime-sulfur, gypsum, soaps, and detergents. Prohibited materials shall include the application of petroleum solvents, diesel, and other petroleum fractions.

(3) When used in connection with the production, handling, or processing of raw agricultural commodities and any other food not specified in paragraphs (1) and (2), any synthetically compounded fertilizer, pesticide, growth regulator, or any other substance that does not consist entirely of microorganisms, microbiological products, or substances consisting of, or derived or extracted solely from plant, animal, or mineral-bearing rock substances. Before harvest, prohibited materials shall not include the application of bordeaux mixes and trace elements for known deficiencies as determined by plant or animal tissue or by soil testing, soluble aquatic plant products, botanicals, lime-sulphur, gypsum, dormant

oils, summer oils, fish emulsion, soaps, detergents, and nonionic surfactants except for petroleum solvents, diesel, and other petroleum fractions, used as weed or carrot oils. Prohibited materials shall not include the application of soaps and detergents.

(4) Water, including substances dissolved in water, shall not be a prohibited material, even if it contains incidental contamination from a prohibited material, if the prohibited material was not added by, or under the direction or control of, the producer, handler, processor or retailer.

(q) "Retailer" means a person engaged in the sale to consumers of food sold as organic and not engaged in the production, handling or processing of food sold as organic.

(r) "Sold as organic" means any use of the terms "organic," "organically grown," "naturally grown," "ecologically grown," or "biologically grown," or grammatical variations of those terms, whether orally or in writing, in connection with any food grown, handled, processed, sold, or offered for sale in this state, including, but not limited to, any use of these terms in labeling or advertising of any food and any ingredient in a multi-ingredient food, except as provided in Section 26569.36.

(s) "Substance" includes all components of a substance, including active and inert ingredients.

(t) "Synthetically compounded" means formulated or manufactured by a process which chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, excepting microbiological processes.

26569.22. Except as otherwise provided in this article, no food shall be sold as organic unless it consists entirely of any of the following:

(a) Raw agricultural commodities which meet the following requirements:

(1) The commodity has been produced and handled without any prohibited material or color additive having been applied, and without irradiation.

(2) In the case of any raw agricultural commodity produced from seed, the seed has not been treated with any prohibited material. If untreated seed is not available, seed treated with a fungicide may be used for food germinated prior to January 1, 1994, except for seed used for sprouts, as described in paragraph (6).

(3) Prior to January 1, 1995, in the case of perennial crops, no prohibited material shall have been applied to the crop, field, management unit, or area in which the commodity is grown for 12 months prior to the appearance of flower buds. During the 1995 calendar year, in the case of perennial crops, no prohibited material shall have been applied to the crop, field, management unit, or area in which the commodity is grown for 24 months prior to harvest. Commencing January 1, 1996, in the case of perennial crops, no prohibited material shall have been applied to the crop, field, management unit, or area in which the commodity is grown for 36

months prior to harvest.

(4) Prior to January 1, 1995, in the case of annual or two-year crops, no prohibited material shall have been applied to the field, management unit, or area in which the commodity is grown for 12 months prior to seed planting or transplanting. During the 1995 calendar year, in the case of annual or two-year crops, no prohibited material shall have been applied to the crop, field, management unit, or area in which the commodity is grown for 24 months prior to harvest. Commencing January 1, 1996, in the case of annual or two-year crops, no prohibited material shall have been applied to the crop, field, management unit, or area in which the commodity is grown for 36 months prior to harvest.

(5) In the case of any raw agricultural commodity that is grown in any growing medium, such as fungi grown in compost or transplants grown in potting mix:

(A) The growing medium must have been manufactured or produced:

(i) Without any prohibited material having been included in the medium.

(ii) Without any prohibited material having been applied to the area in which the medium is manufactured or produced for 12 months prior to seeding or inoculation of the medium.

(iii) Using methods that will minimize the migration or accumulation of any pesticide chemical residue in food grown in the medium.

(B) No prohibited material shall have been applied to the area in which the commodity is grown for 12 months prior to seeding or inoculation.

(6) In the case of any raw agricultural commodity that is grown directly from seed without soil or any growing medium, such as sprouts, no prohibited material shall have been applied to the seed, and no prohibited material shall have been applied to the area in which the commodity is grown for 12 months prior to germination of the seed. After January 1, 1992, the seed shall have been produced, handled, and processed in accordance with this article.

(b) Processed food manufactured only from raw agricultural commodities as described in subdivision (a).

(c) Processed food manufactured only from a combination of raw agricultural commodities as described in subdivision (a) and processed food as described in subdivision (b).

(d) Meat, fowl, fish, dairy products, or eggs which are produced, distributed, and processed without any prohibited material having been applied or administered.

26569.23. (a) No food which contains any prohibited material residue as a result of spray drift or any other contamination beyond the control of the producer, handler, processor, or retailer, may be sold as organic unless the amount of residue does not exceed 10 percent of the federal Environmental Protection Agency tolerance level or, where there is no tolerance level, does not exceed the

federal Food and Drug Administration action level.

(b) After January 1, 1992, no food which contains any prohibited material residue as a result of spray drift or any other contamination beyond the control of the producer, handler, processor, or retailer, may be sold as organic unless the amount of prohibited material residue does not exceed 5 percent of the federal Environmental Protection Agency tolerance level or, where there is not a tolerance level, the federal Food and Drug Administration action level.

26569.24. (a) No food grown, handled, processed, sold, advertised, represented, or offered for sale in this state, shall be sold as organic unless it also is prominently labeled, invoiced, and represented as follows, or with substantially similar language:

(1) For raw agricultural commodities:

ORGANICALLY GROWN IN ACCORDANCE WITH THE CALIFORNIA ORGANIC FOODS ACT OF 1990.

(2) For processed food:

ORGANICALLY GROWN AND PROCESSED IN ACCORDANCE WITH THE CALIFORNIA ORGANIC FOODS ACT OF 1990.

(3) For unprocessed meat, fowl. fish, dairy products, or eggs:

ORGANICALLY PRODUCED IN ACCORDANCE WITH THE CALIFORNIA ORGANIC FOODS ACT OF 1990.

(b) For unpackaged food sold as organic to consumers, physical attachment to the food of the applicable language set forth in subdivision (a) shall not be required if the language appears prominently on or near the bin or container holding the food.

(c) For food certified by a registered certification organization in accordance with Sections 26569.30 to 26569.34, inclusive, or Section 46009 of the Food and Agricultural Code, the term "CERTIFIED" may be used in labeling food sold as organic by the producer and by any handler if the name of the registered certification organization precedes or follows that term in the same size type, and if subdivisions (a) and (b) have been met.

(d) When unprocessed food that has been certified by two or more registered certification organizations, is commingled by a handler or retailer, but is not processed, the food shall thereafter be labeled as set forth in paragraph (1) or (3) of subdivision (a), and subdivisions (b) and (c), with the name of each certification organization that has certified any of the food.

(e) Except as provided in subdivision (f), when less than all of the ingredients in a multi-ingredient food are produced, handled, and, if applicable, processed in accordance with Section 26569.22, the food

shall not be sold as organic. However, those ingredients produced, handled, and processed in accordance with Section 26569.22 may be described using the terms contained in subdivision (r) of Section 26569.21 on the principal display panel of the food if the terms are clearly used only to modify those ingredients and only if 100 percent of those ingredients are produced in accordance with Section 26569.22. The use of the terms shall be limited to no greater than three-quarters of the type size of the statement of identity.

Additionally or alternatively, those ingredients produced, handled, and processed in accordance with Section 26569.22 may be described using the terms contained in subdivision (r) of Section 26569.21 on the ingredient list on the packaging, if all other provisions of this article are met.

(f) No food may be advertised or labeled as "organic when available" or similar terminology which leaves in doubt whether the food is being sold as organic.

(g) The provisions of this article relating to the labeling of meat and meat products and poultry and poultry products shall not be interpreted to authorize any labeling of those products, which is subject to the jurisdiction of federal labeling laws, in a manner inconsistent with those federal labeling laws.

(h) Notwithstanding subdivision (a), until January 1, 1992, any person may utilize existing supplies of labels that conform to the requirements of former Section 26569.13.

26569.25. The director may adopt regulations listing specific substances which are in compliance or not in compliance with subdivision (p) of Section 26569.21 for use in the processing of foods under the enforcement jurisdiction of the department.

26569.28. (a) All persons who produce raw agricultural commodities that are sold as organic shall keep accurate and specific records of the following:

(1) For each field or management unit, all substances applied to the crop, soil, growing medium, growing area, irrigation or postharvest wash or rinse water, or seed, including all substances applied during the time periods specified in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 26569.22, the quantity of each substance applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(2) The quantity harvested from each field or management unit, the size of the field or management unit, the field number, and the date of harvest.

(3) The name and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all handlers, processors, or retailers to whom the food is sold or otherwise transferred, the quantity of food sold or otherwise transferred, and the date of the transaction.

(b) All persons who produce meat, fowl, fish, dairy products, or eggs sold as organic shall keep accurate and specific records of the following:

(1) Unless the livestock, fowl, or fish was raised or hatched by the producer, the name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all suppliers of livestock, fowl, or fish and the date of the transaction.

(2) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all suppliers of feed, the quantity of feed purchased, and the date of the transaction.

(3) All substances administered and fed to the animal, including all feed, medication and drugs, and all substances applied in any area in which the animal, milk or eggs are kept, including the quantity administered or applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(4) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all handlers, processors, or retailers to whom the food is sold or otherwise transferred, the quantity of food sold or otherwise transferred, and the date of the transaction.

(c) All persons who handle food sold as organic shall keep accurate and specific records of the following:

(1) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all suppliers of the food, the quantity of food purchased or otherwise transferred, and the date of the transaction.

(2) Invoices for each shipment from the supplier that state that the food may be sold as organic.

(3) If the food is labeled or represented to be certified, invoices from the supplier or separate written documentation from a certification organization which states that the food is certified under this article.

(4) All pesticide chemicals applied to the food while in the control of the handler, including the quantity applied, and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(5) All substances routinely applied in or around any area or container in which the food is kept. All substances shall be identified by brand name, if any, and by source. This record may be provided in the form of a single list of substances used.

(6) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all persons to whom the food is sold or otherwise transferred, the quantity of food sold or otherwise transferred, and the date of the transaction.

(d) All persons who process food sold as organic shall keep accurate and specific records of the following:

(1) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the

Food and Agricultural Code of all suppliers of the food, the quantity of food purchased or otherwise transferred, and the date of the transaction.

(2) Invoices for each shipment from the supplier that state that the food may be sold as organic.

(3) If the food is labeled or represented to be certified, invoices from the supplier or separate written documentation from a certification organization which states that the food is certified under this article.

(4) All substances applied to the food or used in its processing, all substances applied to the food while in the control of the processor, and all substances applied in or around any area or container in which the food is kept, including the quantity of substances applied and the date of each application. All substances shall be identified by brand name, if any, and by source.

(5) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all handlers, processors, or retailers to whom the food is sold or otherwise transferred, the quantity of food sold or otherwise transferred, and the date of the transaction.

(e) All persons who sell, at retail, food sold as organic shall keep accurate and specific records of the following:

(1) The name and address and, if applicable, the registration numbers issued pursuant to Section 26569.35 or Section 46002 of the Food and Agricultural Code of all suppliers of the food, the quantity of food purchased or otherwise transferred, and the date of the transaction.

(2) Invoices for each shipment from the supplier that state that the food may be sold as organic.

(3) If the food is labeled or represented to be certified, invoices from the supplier or separate written documentation from a certification organization which states that the food is certified under this article.

(4) All pesticide chemicals applied to the food while in the control of retailer, including the quantity applied, and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(5) All substances routinely applied in or around any area or container in which the food is kept. All substances shall be identified by brand name, if any, and by source. This record may be provided in the form of a single list of substances used. One list may be kept at the retailer's headquarters office if all individual stores operated by that retailer utilize only the substances on the list.

Paragraphs (1) and (2) shall not apply to a person who both produces and sells, at retail, the same food. The records required to be kept pursuant to paragraphs (1) to (4), inclusive, of this subdivision may be kept at the retailer's warehouse or headquarters office.

(f) All records required to be kept under this section shall be

maintained by producers, handlers, and processors for no less than two years from the date on which the food is sold and shall be maintained by retailers for no less than one year from the date on which the food is received by the retailer. These records shall be made available for inspection at any time by the director or the Director of Food and Agriculture and by each certification organization that certifies the food, if any, for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

26569.29. (a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of food sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the director or the Director of Food and Agriculture of any record required to be kept under this section for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

(b) Upon written request of any person, the director and the Director of Food and Agriculture shall obtain and provide to the requesting party within 10 working days of the request a copy of the following records required to be kept under this section which pertain to a specific product sold or offered for sale, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, and any other information on that record which is not required to be disclosed under this subdivision shall be removed before disclosure:

(1) Records of a producer, as described in paragraph (1) of subdivision (a) and in paragraph (3) of subdivision (b) of Section 26569.28.

(2) Records of a handler, as described in paragraphs (4) and (5) of subdivision (c) of Section 26569.28, records of previous handlers, if any, and producers as described in paragraph (1) of subdivision (a) of, paragraph (3) of subdivision (b) of, and paragraphs (4) and (5) of subdivision (c) of, Section 26569.28, without identifying the previous handlers or producers, and, if applicable, records obtained as required in subdivision (d).

(3) Records of a processor, as described in paragraph (4) of subdivision (d) of Section 26569.28, records of previous processors and handlers, if any, and producers as described in paragraph (1) of subdivision (a) of, paragraph (3) of subdivision (b) of, paragraphs (4) and (5) of subdivision (c) of, and paragraph (4) of subdivision (d) of, Section 26569.28, without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d).

(4) Records of a retailer, as described in paragraphs (4) and (5) of subdivision (e) of Section 26569.28, records of previous processors and handlers, if any, and producers as described in paragraph (1) of subdivision (a) of, paragraph (3) of subdivision (b) of, paragraphs

(4) and (5) of subdivision (c), and paragraph (4) of subdivision (d) of, Section 26569.28, without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d).

(c) The director or the Director of Food and Agriculture may charge the person requesting records a reasonable fee for the cost of reproducing the records requested and may require specific information on the date and location of sale or offer for sale and details concerning the identity of the product.

(d) Any person who first imports into this state, for resale, food sold as organic shall obtain and provide to the enforcement authority, upon request, the records required to be kept under subdivisions (a) and (b) of Section 26569.28 and, if applicable, subdivisions (c) and (d).

26569.30. (a) On or after January 1, 1992, the term "certified" and variations of that term may be used in connection with food sold as organic only in accordance with this section, subdivisions (c) and (d) of Section 26569.24, Sections 26569.31 to 26569.34, inclusive, and Section 46009 of the Food and Agricultural Code.

(b) Food sold as organic may be certified only by a certification organization registered pursuant to subdivisions (c) and (d), by the director pursuant to subdivision (f), or by a county agricultural commissioner pursuant to Section 46009 of the Food and Agricultural Code.

(c) In order to be registered, a certification organization shall meet all of the following minimum qualifications:

(1) Be the certification organization for at least 10 legally separate and distinct, financially unrelated, and independently controlled persons involved in the production or processing of food sold as organic.

(2) Be a legally separate and distinct entity from any person whose food is certified by the organization. A certification organization shall be considered legally separate and distinct notwithstanding the fact that persons or representatives of persons whose food is certified serve as directors, officers, or in other capacities for the certification organization, so long as those persons or representatives of those persons do not exercise decisionmaking authority over certification of that particular food.

(3) Have no financial interest in the sale of the food, except that fees charged by the certification organization to cover the reasonable costs of operating the certification organization do not constitute a financial interest for purposes of this section.

(d) On or after January 1, 1991, a certification organization which certifies processed food sold as organic, except for processed meat, fowl, or dairy products, shall have registered with the director and shall thereafter annually renew the registration unless no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the director, shall include the filing of a certification plan as specified in Section 26569.33 and payment of the

fee specified in subdivision (f). The director shall make forms available for this purpose on or before July 31, 1991. The registration form shall include the names of all persons involved in making certification decisions or setting certification standards for the certification organization. The director shall reject a registration submission that is incomplete or not in compliance with this article.

(e) On or after July 31, 1991, the director may, upon the request of a sufficient number of persons to fund the program's cost, establish and maintain a certification program for processors of food sold as organic and shall establish and collect a fee from all processors of food certified under that program to cover all of the department's costs of administering the program. The certification program shall be subject to all provisions regarding certification organizations contained in this article, except that the requirements of subdivisions (c) and (d) shall not apply.

(f) The director shall supervise all certification organizations registered with the department, shall establish a complaint procedure concerning noncompliance with this article by certification organizations registered with the department, and shall establish and collect an annual registration fee based on the unit of weight or measure, gross sales or other measure of the amount of food certified by the organization, to cover the costs of the supervision. The registration fee established by the department shall not exceed two thousand dollars ($2,000) per organization. Supervision shall include a written evaluation of the organization's certification plan at least biannually. The written evaluation shall be made available for public inspection.

(g) The director shall have the authority to audit the organization's certification procedures and records at any time. Records of certification organizations not otherwise required to be disclosed shall be kept confidential by the director.

26569.31. Prior to an initial certification, a registered certification organization shall conduct at least two initial physical inspections of the premises at which the food to be certified is produced or processed. These inspections shall include the recordkeeping system necessary for compliance with Section 26569.28 and the area or facility at which the food is produced or processed.

For raw agricultural commodities, at least one initial inspection shall include fertility analysis of the soil or growing medium. Sampling for this analysis shall be no less frequent than one sample per 40 acres or per management unit, whichever is less, except that only one sample shall be required for contiguous parcels managed solely for range or pasturage, and except that, for field crops, sampling shall be no less frequent than one sample per 160 acres or per management unit, whichever is less.

26569.32. (a) A registered certification organization shall no less often than, at the end of each calendar quarter, prepare a list by name of all persons whose production or processing of food is certified or pending certification by the certification organization.

This list shall be filed with the department or the Department of Food and Agriculture, as applicable, by the certification organization and made publicly available within 30 days after the end of each quarter.

(b) A registered certification organization shall, at least annually, physically inspect the premises at which the food to be certified is produced and processed. The inspection shall include an examination of recordkeeping and, for raw agricultural commodities, fertility analysis as required under Section 26569.31.

26569.33. A registered certification organization shall adopt and adhere to a certification plan filed annually and made publicly available. Except in the case of a certification program established pursuant to subdivision (e) of Section 26569.30, a certification plan shall be filed as part of the registration required pursuant to subdivision (d) of Section 26569.30. A certification plan shall at minimum include a detailed description of all of the following elements of the certification organization's program:

(a) Minimum information required from producers or processors regarding growing or processing practices and methods for verifying that information.

(b) Qualifications of and training requirements for all inspectors.

(c) Procedures for inspection, including frequency and items covered.

(d) Procedures for soil and tissue sampling and analysis.

(e) Criteria for certification.

(f) Process for certification decisionmaking, including identification of persons with decisionmaking authority.

26569.34. (a) Only food that has been produced, handled, and processed in accordance with this article may be certified by a registered certification organization. No food may be certified unless compliance with this article has been verified by the registered certification organization, in the case of producers, for at least one year, and in the case of processors, for at least six months.

(b) Processed or multi-ingredient food sold as organic may only by certified if all the ingredients are certified.

26569.35. (a) On or after January 1, 1992, every person engaged in this state in the processing or handling of processed food sold as organic, including the handling or processing of fish or seafood sold as organic, except for processors and handlers of processed meat, fowl, or dairy products, shall have registered with the director, prior to the first sale of such food, and shall thereafter annually renew the registration unless no longer so engaged.

(b) Registration shall be on a form provided by the director and shall be valid for a period of one calendar year from the date of validation of the completed registration form. The director shall make forms available for this purpose on or before October 1, 1991. The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the specific

commodities handled or processed which are sold as organic.

(2) Sufficient information, under penalty of perjury, to enable the director to verify the amount of the registration fee to be paid in accordance with subdivision (c).

(3) The names of all certification organizations and governmental entities, if any, providing certification pursuant to this article.

(c) A registration form shall be accompanied by payment of a nonrefundable registration fee. For handlers and processors subject to the enforcement jurisdiction of the director, the director shall establish a fee schedule to cover the additional cost of enforcing and administering this article in conjunction with other enforcement responsibilities funded from other sources. The registration fee shall not exceed two thousand dollars ($2,000). The director shall publish annually a list of the fee schedule for each registration governed by this article. The setting of fees pursuant to this article 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.

(d) To the extent feasible, the director shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.

(e) The director shall reject a registration submission which is incomplete or not in compliance with this article.

(f) A registrant shall immediately notify the director of any change in the information reported on the registration form and shall pay any additional assessment owed if that change results in a higher assessment owed than that previously paid.

(g) Registration forms shall be made available to the public for inspection and copying at the main office of the department. Copies of registration forms shall also be made available by mail, upon written request and payment of a reasonable fee, as determined by the director. All financial information of the registrant shall be deleted prior to public inspection and copying.

(h) The requirements of this section shall not apply to retailers of food sold as organic.

26569.36. This article shall apply to all food sold as organic within the state, wherever produced, handled, or processed, and to all food produced, handled, or processed in the state, wherever sold as organic, except that in lieu of certification under this article, the director may recognize a certification program operating outside the state which certifies processed food sold as organic, except for processed meat, fowl, or dairy products, as functionally equivalent to a certification organization registered under Section 26569.30, so long as that program meets minimum standards substantially similar to those contained in subdivision (c) of Section 26569.30 and Section 26569.31 and subdivision (b) of Section 26569.32.

26569.37. This article shall not apply to the term "natural" when used in the labeling or advertising of a food.

26569.38. (a) It is unlawful for any person to sell, offer for sale,

advertise, or label any food in violation of this article.

(b) Notwithstanding subdivision (a), a person engaged in business as a distributor or retailer of food who in good faith sells, offers for sale, labels, or advertises any food in reliance on the representations of a producer, processor, or other distributor that the food may be sold as organic, shall not be found to violate this article unless the distributor either: (1) knew or should have known that the food could not be sold as organic; (2) was engaged in producing or processing the food; or (3) prescribed or specified the manner in which the food was produced or processed.

26569.39. (a) It is unlawful for any person to certify food in violation of this article.

(b) It is unlawful for any person to certify food as organic unless duly registered as a certification organization pursuant to Section 26569.30.

(c) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration for a certification organization pursuant to Section 26569.30.

26569.40. (a) It is unlawful for any person to produce, handle, or process food sold as organic unless duly registered pursuant to Section 26569.34.

(b) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration pursuant to Section 26569.35.

26569.41. It is unlawful for any person to forge, falsify, fail to retain, fail to obtain, or fail to disclose records pursuant to Sections 26569.28 and 26569.29.

26569.42. It is unlawful for any person to advertise, label, or otherwise represent that any fertilizer or pesticide chemical may be used in connection with the production, processing, or distribution of food sold as organic if that fertilizer or pesticide chemical contains a prohibited material.

26569.43. (a) In lieu of prosecution, the director may levy a civil penalty against any person who violates this article or any regulation adopted pursuant to this article in an amount not more than five thousand dollars ($5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this article, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the director finds that a violation was not intentional, the director may levy a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivisions (a) and (b), the director may issue a notice of violation, if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director, upon request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the decision of the director may be sought by any person within 30 days of the date of the final order of the director pursuant to Section 1094.5 of the Code of Civil Procedure.

(f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state.

26569.435. No fee established and collected pursuant to this article shall exceed the department's costs of regulating and enforcing the provisions of this article related to the function for which the fee is established.

26569.44. Any fees and civil penalties collected pursuant to this article shall be deposited in the General Fund and, upon appropriation by the Legislature, shall be expended to fulfill the responsibilities of the director as specified in this article.

26569.45. The director shall, to the extent funds are available, enforce the provisions of this article applicable to all processors and handlers of processed food sold as organic, including handlers and processors of fish and seafood sold as organic, except for processors and handlers of processed meat, fowl, and dairy products.

26569.46. (a) The director shall maintain in a central location, and make publicly available for inspection and copying, upon request, a list of all penalties levied within the past five years, including the amount of each penalty, the party against whom the penalty was levied, and the nature of the violation. The list also shall be available by mail, upon written request and payment of a reasonable fee, as determined by the director.

(b) On or before January 1, 1994, the director, in cooperation with the Director of Food and Agriculture, shall prepare a report to the Legislature describing enforcement activities under this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code and containing recommendations regarding the need for, and means of, improved enforcement of this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

26569.47. (a) Any person may file a complaint with the director concerning suspected noncompliance with this article by a person over whom the director has responsibility as provided in this article.

(b) The director shall, to the extent funds are available, establish a procedure for handling complaints, including, provision of a written complaint form, and procedures for commencing an investigation within three working days of receiving a written complaint regarding fresh food, and within seven working days for

other food, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 90 days thereafter.

(c) The director may establish minimum information requirements to determine the verifiability of a complaint and may provide for rejection of a complaint which does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.

(d) The responsibilities of the director under this section shall be carried out to the extent funds are available.

26569.48. This article shall apply notwithstanding any other provision of law that is inconsistent with this article. Nothing in this article is intended to repeal any other provision of law not inconsistent with this article.

26569.49. The director may adopt any regulations as are reasonably necessary to assist in the implementation of, or to make more specific, the provisions of, this article.

26569.50. Any reference in law to former Section 26569.11, whether existing or hereinafter enacted, shall be interpreted to refer to this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code as the successor section.

SEC. 11. Section 26850.5 of the Health and Safety Code is amended to read:

26850.5. (a) Notwithstanding the provisions of Section 26850 or any other provision of law, any person may bring an action in superior court pursuant to this section and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Article 4.5 (commencing with Section 26569.20 of Chapter 5. Any proceeding under the provisions of this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the person shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

(b) In addition to the injunctive relief provided in subdivision (a), the court may award to such person, organization, or entity reasonable attorney's fees as determined by the court.

(c) The provisions of this section shall not be construed to limit or alter the powers of the department and its authorized agents to bring an action to enforce the provisions of this chapter pursuant to Section 26850 or any other provision of law.

SEC. 12. 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. 13. 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 local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for certain aspects of the program or level of service mandated by this act.

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 1263

An act to amend Sections 1830, 1832, 1833, 33050, 35296, 35500, 37220, 37252, 39619.5, 42800, 44947, 46300.1, 46300.3, 48206.3, and 56827 of, and to add Sections 2557.5, 4022, 4023, 4024, and 51745.6 to, the Education Code, relating to education

[Approved by Governor September 22, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 1830 of the Education Code is amended to read:

1830. (a) The county superintendent of schools may, with the approval of the county board of education, establish, conduct, and maintain facilities, for use in the elementary and secondary schools of the school districts under his jurisdiction that elect to participate in the use of the facilities, which provide for audio and visual curriculum materials, including the necessary salaries, supplies, materials, apparatus, and equipment and other necessary expenses.

(b) The county superintendent of schools shall, with the approval of the county board of education, enter into an agreement with the governing board of any school district or community college district

electing to participate which shall provide for payment by the district for the use of audiovisual facilities. The county superintendent of schools shall, with the approval of the county board of education, prescribe the method for determining the amount to be paid for the use of the facilities, but in no event shall the total payments made to the county superintendent of schools of any county by the districts of that county be less than one-half of an amount equal to the total cost of the use of the facilities provided to the districts electing to participate, less any restricted remaining balance and any amount received by the county superintendent of schools under the provisions of the National Defense Education Act of 1958 (Public Law 864, Eighty-fifth Congress) or under any similar provisions of any other act of Congress, except that the Superintendent of Public Instruction may provide county school service fund money in addition to the established ratio of support in those counties in which he determines that sparsity of population increases operational costs.

(c) Films and filmstrips shall be adopted by the county board of education before they are purchased by the county superintendent of schools

SEC. 2. Section 1832 of the Education Code is amended to read:

1832. The county superintendent of schools may, with the approval of the county board of education, enter into an agreement with the state, the Federal Bureau of Indian Affairs, any political subdivision, or any agency of the state or of any political subdivision, to conduct and maintain distribution among schools of districts under the jurisdiction of the county superintendent of schools, under such conditions as are agreed upon, of audio and visual instruction materials and apparatus approved by the constituted educational authorities. The state, any political subdivision, or any agency of the state or of any political subdivision may enter into any agreement with a county superintendent of schools authorized by this article.

SEC. 3. Section 1833 of the Education Code is amended to read:

1833. The agreement may, among other matters, provide for the payment by the county superintendent of schools, at such times as are agreed upon, from the county school service fund to the state, political subdivision, or agency, of money for the distribution of materials and apparatus among the schools under his jurisdiction. All money transferred shall be used by the authorities of the state, political subdivision, or agency solely for the acquisition of audio and visual materials and apparatus as may be designated by the constituted educational authorities and for the care and distribution to schools of the county of the materials and apparatus.

SEC. 4. Section 2557.5 is added to the Education Code, to read:

2557.5. (a) For the 1987–88 fiscal year, and each fiscal year thereafter, the revenue limit of any county superintendent of schools authorized pursuant to Section 2551 may be increased by an amount sufficient to provide additional revenue equal to the expenditure estimated to be incurred by the county superintendent of schools in

the budget year in complying with the following provisions of the Unemployment Insurance Code: Sections 605 and 803, Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1, or Article 3 (commencing with Section 976) of Chapter 4 of Part 1 of Division 1, less the actual expenditures incurred by the county superintendent of schools in the 1975–76 fiscal year in complying with the following provisions of the Unemployment Insurance Code: Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1 and former Section 605.2.

(b) The increase in revenue limit provided in subdivision (a) shall be adjusted annually, including plus or minus adjustments for under- or over-estimating expenditures used in determining the increase in revenue limit provided by subdivision (a) in the previous fiscal year.

SEC. 5. Section 4022 is added to the Education Code, to read:

4022. (a) The State Board of Education may, upon its own motion or upon petition of the county board of education or a majority of districts in the county, reestablish a county committee on school district organization whose duties and powers have been previously transferred pursuant to Section 4020.

(b) The State Board of Education shall vote to approve or disapprove any petition submitted pursuant to subdivision (a) at the next regularly scheduled board meeting for which the matter can be properly noticed.

SEC. 6. Section 4023 is added to the Education Code, to read:

4023. Notwithstanding subdivision (a) of Section 4005, the first annual meeting following the reestablishment of a county committee on school district organization shall occur within 30 days of the State Board of Education's action to reestablish the committee.

SEC. 7. Section 4024 is added to the Education Code, to read:

4024. A county committee on school district organization reestablished pursuant to Section 4022 succeeds to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction previously transferred to the county board of education pursuant to Section 4021.

SEC. 8. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(6) Sections 52163, 52165, 52166, and 52178.

(7) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(8) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(9) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25 of Division 3 of this title, Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27 of this division; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25 of Division 3 of this title.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, which is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver

under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 8.5. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(6) Sections 51513, 52163, 52165, 52166, and 52178.

(7) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(8) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(9) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive, Article 3 (commencing with Section 44930) of Chapter 4 of Part 25 of Division 3 of this title, Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27 of this division; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25 of Division 3 of this title

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, which is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 9. Section 35296 of the Education Code is amended to read:

35296. The governing board of each school district and the county superintendent of schools of each county shall establish an earthquake emergency procedure system in every public school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. The governing board of each private school shall establish an earthquake emergency procedure system in every private school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. Governing boards and county superintendents may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure systems.

SEC. 10. Section 35500 of the Education Code is amended to read:

35500. It is the intent of the Legislature to utilize the organization of districts as they exist on January 1, 1981, and the master plan for school district organization in each county, which was developed and approved under the provisions of this chapter as they existed prior to January 1, 1981, or any approved updated version of the master plan not inconsistent with other provisions of law, as the basis for future reorganization of districts in each county.

SEC. 11. Section 37220 of the Education Code is amended to read:

37220. (a) Except as otherwise provided, the public schools shall

close on the following holidays:

(1) January 1.

(2) The third Monday in January or Monday or Friday in the week in which January 15th occurs known as "Dr. Martin Luther King, Jr. Day." On the Friday preceding which day the schools are closed, schools shall include exercises commemorating and directing attention to the history of the civil rights movement in the United States and particularly the role therein of Dr. Martin Luther King, Jr.

(3) The Monday or Friday of the week in which February 12 occurs, known as "Lincoln Day." On the day that school is in session prior to the day on which schools are closed for that purpose, all public schools and educational institutions throughout the state shall hold exercises in memory of Abraham Lincoln.

(4) The third Monday in February known as "Washington Day." On the Friday preceding, all public schools and educational institutions throughout the state shall hold exercises in memory of George Washington.

(5) The last Monday in May known as "Memorial Day."

(6) July 4th.

(7) The first Monday in September known as "Labor Day."

(8) November 11th known as "Veterans Day."

(9) That Thursday in November proclaimed by the President as "Thanksgiving Day."

(10) December 25th.

(11) All days appointed by the Governor for a public fast, thanksgiving, or holiday and all special or limited holidays on which the Governor provides that the schools shall close.

(12) All days appointed by the President as a public fast, thanksgiving, or holiday, unless it is a special or limited holiday.

(13) Any other day designated as a holiday by the governing board of the school district.

(b) When any of the holidays on which the schools would be closed fall on Sunday, the public schools shall close on the Monday following.

(c) When any of the holidays on which the schools would be closed falls on Saturday, the public schools shall close on the preceding Friday, and that Friday shall be declared a state holiday.

(d) If any holiday on which the public schools are required to close pursuant to subdivision (a) occurs under federal law on a date different from the date specified in subdivision (a), the governing board of any school district may close the public schools of the district on the date recognized by federal law and maintain classes on the date specified in subdivision (a).

SEC. 12. Section 37252 of the Education Code is amended to read:

37252. (a) The governing board of each district maintaining any or all of grades 7 to 12, inclusive, shall offer summer school instructional programs for pupils enrolled in grades 7 to 12, inclusive, who were assessed as not meeting the district's adopted standards of

proficiency in basic skills pursuant to Article 2.5 (commencing with Section 51215) of Chapter 2 of Part 28.

For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade.

(b) The summer school programs shall also be offered to pupils who were enrolled in grade 12 during the prior school year after the completion of grade 12, and upon the successful completion of the summer program, these pupils may be reassessed for puposes of meeting the district's standards of proficiency.

SEC. 13. Section 39619.5 of the Education Code is amended to read:

39619.5. (a) Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship. The apportionment shall be in addition to the apportionments made pursuant to Section 39619. Not less than one-half of all funds made available by this section shall be apportioned to school districts that had an average daily attendance, excluding summer session attendance, of less than 2,501 during the prior fiscal year.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project.

(c) Notwithstanding subdivision (a), in any fiscal year in which the State Allocation Board has apportioned all funding from the State School Deferred Maintenance Fund for which school districts have qualified under Section 39619, the board may apportion any amount remaining in that fund for the purposes of this section.

SEC. 14. Section 42800 of the Education Code is amended to read:

42800. (a) The governing board of any school district may, with the consent of the county superintendent of schools, establish a revolving cash fund for the use of the chief accounting officer of the district, by adopting a resolution setting forth the necessity for the revolving cash fund, the officer for whom and the purposes for which

the revolving cash fund shall be available, and the amount of the fund. The purposes for which the revolving cash fund shall be available shall include the purposes specified in Section 45167. Three certified copies of the resolution shall be transmitted to the county superintendent of schools. If he approves the establishment of the fund, the county superintendent shall endorse his consent on the resolution and return one copy to the governing body of the district, and transmit one copy to the county auditor.

(b) The maximum amount allowed for revolving cash funds established pursuant to subdivision (a) shall be the lesser of:

(1) Two percent of the district's estimated expenditures for the current fiscal year, or

(2) A dollar amount limit of seventy-five thousand dollars ($75,000) for any elementary school or high school district and one hundred fifty thousand dollars ($150,000) for any unified school district for fiscal year 1990–91. The dollar amount limit for each district shall thereafter be increased annually by the percentage increase in the district's revenue limit established by Section 42238.

SEC. 15. Section 44947 of the Education Code is amended to read:

44947. If an employee is dismissed for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Commission on Teacher Credentialing and to the county board of education which issued the certificate under which the employee was serving at the time of his dismissal, a copy of the reporter's transcript of the hearing accompanied by a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

SEC. 16. Section 46300.1 of the Education Code is amended to read:

46300.1. (a) For the 1990–91 and 1991–92 fiscal years, no school district or county office of education may receive apportionments for independent study by pupils 21 years of age or older, or by pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday for average daily attendance in excess of the number of units of average daily attendance generated by such pupils in the 1988–89 fiscal year.

(b) Commencing with the 1990–91 fiscal year, apportionments for pupils 21 years of age or older, and for pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday in independent study under Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28, who are enrolled in kindergarten or any of the grades 1 to 12, inclusive, shall be reduced over a two-year period to the statewide average level per average daily attendance paid for pupils in adult education according to the following schedule:

(1) For the 1990–91 fiscal year, independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been

continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday generate a revenue limit equivalent to 166 percent of the statewide average level per unit of average daily attendance paid for pupils in adult education.

(2) For the 1991–92 fiscal year, independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday generate a revenue limit equivalent to 132 percent of the average adult education revenue limit.

(3) For the 1992–93 fiscal year and each fiscal year thereafter, independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday generate a revenue limit equivalent to 100 percent of the average adult education revenue limit.

SEC. 17. Section 46300.3 of the Education Code is amended to read:

46300.3. Apportionments paid for concurrent enrollment in adult education by independent study pupils 21 years of age or older, and independent study pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, shall not exceed the adult education revenue limit.

This section shall become operative on July 1, 1990.

SEC. 18. Section 48206.3 of the Education Code is amended to read:

48206.3. (a) Except for those pupils receiving individual instruction provided pursuant to Section 48206.5, a pupil with a temporary disability which makes attendance in the regular day classes or alternative education program in which the pupil is enrolled impossible or inadvisable shall receive individual instruction provided by the district in which the pupil is deemed to reside.

(b) For purposes of this section and Sections 48206.5, 48207, and 48208, the following terms have the following meanings:

(1) "Individual instruction" means instruction provided to an individual pupil in the pupil's home, in a hospital or other residential health facility, excluding state hospitals, or under other circumstances prescribed by regulations adopted for that purpose by the State Board of Education.

(2) "Temporary disability" means a physical, mental, or emotional disability incurred while a pupil is enrolled in regular day classes or an alternative education program, and after which the pupil can reasonably be expected to return to regular day classes or the alternative education program without special intervention. A temporary disability shall not include a disability for which a pupil is identified as an individual with exceptional needs pursuant to Section 56026.

(c) (1) For purposes of computing average daily attendance pursuant to Section 42238.5, each clock hour of teaching time devoted to individual instruction shall count as one day of attendance.

(2) No pupil shall be credited with more than five days of attendance per calendar week, or more than the total number of calendar days that regular classes are maintained by the district in any fiscal year.

(d) Notice of the availability of individualized instruction shall be given pursuant to Section 48980.

SEC. 19. Section 51745.6 is added to the Education Code, to read:

51745.6. (a) The ratio of average daily attendance for independent study pupils 18 years of age or less to school district full-time equivalent certificated employees responsible for independent study, calculated as specified by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other education programs operated by the school district. The ratio of average daily attendance for independent study pupils 18 years of age or less to county office of education full-time equivalent certificated employees responsible for independent study, to be calculated in a manner prescribed by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the high school or unified school district with the largest average daily attendance of pupils in that county. The computation of those ratios shall be performed annually by the reporting agency at the time of, and in connection with, the second principal apportionment report to the Superintendent of Public Instruction.

(b) Only those units of average daily attendance for independent study that reflect a pupil-teacher ratio that does not exceed the ratio described in subdivision (a) shall be eligible for apportionment pursuant to Section 42238.5, for school districts, and Section 2558, for county offices of education. Nothing in this section shall prevent a school district or county office of education from serving additional units of average daily attendance greater than the ratio described in subdivision (a), except that those additional units shall not be funded pursuant to Section 42238.5 or Section 2558.

(c) The calculations performed for purposes of this section shall not include either of the following:

(1) The average daily attendance generated by special education pupils enrolled in special day classes on a full-time basis, or the teachers of those classes.

(2) The average daily attendance or teachers in necessary small schools that are eligible to receive funding pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

SEC. 20. Section 56827 of the Education Code is amended to read:

56827. The Superintendent of Public Instruction shall review the information and calculations submitted by districts and county

offices in support of all apportionment computations described in this chapter. The review shall be conducted on the data submitted during the initial year of apportionment and for first succeeding fiscal year only. Adjustments to any year's apportionment shall be received by the superintendent from the district or county office prior to the end of the first fiscal year following the fiscal year to be adjusted. The superintendent shall consider and adjust only the information and computational factors originally established during an eligible fiscal year, if the superintendent's review determines that they are correct.

SEC. 21. Notwithstanding any other provisions of law, for purposes of the calculation of a revenue limit for regional occupational centers and programs for the 1987–88 fiscal year, the term "annual units of average daily attendance for the 1982–83 fiscal year" in subdivision (c) of Section 52335.2 of the Education Code, as that subdivision read on July 1, 1987, shall be deemed to mean the annual units of average daily attendance for the 1981–82 base year or the annual units of average daily attendance for the 1982–83 fiscal year, whichever is less.

SEC. 22. Section 8.5 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill and SB 2605. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 33050 of the Education Code, and (3) this bill is enacted after SB 2605, in which case Section 8 of this bill shall not become operative.

SEC. 23. The amendment to Section 48206.3 of the Education Code made by Section 18 of this act, and the provision of law added by Section 21 of this act do not constitute changes in, but are declaratory of, existing law.

SEC. 24. 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 1264

An act relating to crimes.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 25, 1990]

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

SECTION 1. There is hereby created within the Office of Criminal Justice Planning a one-year pilot program which shall study the effectiveness of collecting restitution which is ordered paid to crime victims.

The program, which shall be implemented by the office in conjunction with the State Board of Control, shall monitor restitution orders and their collections, and prepare a final accounting comparing the amount of victim restitution defendants are ordered to pay upon sentencing with the actual amount paid by the defendants. The counties included in this program shall be Sacramento County, Orange County, and Shasta County.

CHAPTER 1265

An act to amend Sections 25201, 25205.1, 25345.5, and 25366.5 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) Except as provided in subdivision (c), 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.

(c) A hazardous waste facilities permit is not required for a household hazardous waste collection facility operated by a public

agency, or by any person under an agreement with a public agency, if all of the following conditions are met:

(1) The facility accepts only the following materials for subsequent transport to a recycling facility:

(A) Latex paint.

(B) Used oil.

(C) Antifreeze.

(D) Spent lead-acid batteries.

(E) Nickel-cadmium, alkaline, carbon-zinc, and other small batteries.

(2) No hazardous wastes are received and handled at the collection facility other than the materials specified in paragraph (1).

(3) The materials are transported to the collection facility by the person who generated the material.

(4) The latex paint, antifreeze, and small batteries transported to the collection facility by any one individual at one time do not exceed a total volume of five gallons or a total weight of 50 pounds.

(5) Used oil transported to the collection facility meets both of the following conditions:

(A) The contents of any single container do not exceed five gallons.

(B) Each shipment of used oil does not exceed 20 gallons.

(6) The materials collected are not stored at the collection facility for more than 180 days, except that less than one ton of spent lead-acid batteries may be stored at the facility for up to one year. Over one ton of lead-acid batteries shall not be stored at the collection facility for more than 180 days.

(7) The materials collected are managed in accordance with the hazardous waste labeling, containerization, emergency response, and personnel training requirements of this chapter.

SEC. 2. Section 25205.1 of the Health and Safety Code is amended to read:

25205.1. For purposes of this article the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any structure, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued a permit or a grant of interim status by the department pursuant to Article 9 (commencing with Section 25200) or which is operated in such a manner that the facility is required to obtain a permit or grant of interim status. "Facility" does not include either of the following:

(1) Any facility operated by a local government agency, or by any person operating a hazardous waste collection program under an agreement with a public agency, which is used for any of the following:

(A) Household hazardous waste collection.

(B) The collection of hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(C) Hazardous wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(2) That portion of a solid waste management facility permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code, which is used for the segregation, handling, and storage of hazardous waste separated from solid waste loads received by the facility, pursuant to a load checking program.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(d) "Large treatment facility" means a treatment facility which treats or recycles 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(e) "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1988, in those amounts specified in subdivision (b) of Section 25205.5 at an individual site commencing on or after July 1, 1988, and who has not paid a hazardous waste facility fee for that same individual site.

(f) "Ministorage facility" means a storage facility which stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(g) "Minitreatment facility" means a treatment facility which treats or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(h) "Site" means the location of an operation which generates hazardous wastes and which is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility" means a storage facility which stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month.

(j) "Small treatment facility" means a treatment facility which treats or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month.

SEC. 3. Section 25205.1 of the Health and Safety Code is amended to read:

25205.1. For purposes of this article the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any structure, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued a permit or a grant of interim status by the department pursuant to Article 9 (commencing with Section 25200) or which is operated in such a manner that the facility is required to obtain a permit or grant of interim status. "Facility" does not include either of the following:

(1) Any facility operated by a local government agency, or by any person operating a hazardous waste collection program under an agreement with a public agency, which is used for any of the

following:

(A) Household hazardous waste collection.

(B) The collection of hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(C) Hazardous wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(2) That portion of a solid waste management facility permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code, which is used for the segregation, handling, and storage of hazardous waste separated from solid waste loads received by the facility, pursuant to a load checking program.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(d) "Large treatment facility" means a treatment facility which treats or recycles 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(e) "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1988, in those amounts specified in subdivision (b) of Section 25205.5 at an individual site commencing on or after July 1, 1988.

(f) "Ministorage facility" means a storage facility which stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(g) "Minitreatment facility" means a treatment facility which treats or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(h) "Site" means the location of an operation which generates hazardous wastes and which is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility" means a storage facility which stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month.

(j) "Small treatment facility" means a treatment facility which treats or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month.

SEC. 4. Section 25345.5 of the Health and Safety Code is amended to read:

25345.5. (a) The recordkeeping requirements of Section 25342 and the tax provided for in Section 25345 do not apply to hazardous wastes collected by any public agency or any person operating a hazardous waste collection program under an agreement with a public agency, if the waste results from a hazardous waste collection program which complies with all requirements of Chapter 6.5 (commencing with Section 25100) and regulations adopted pursuant thereto. For the purposes of this subdivision, "hazardous waste collection program" means a program in which small quantities of hazardous wastes are received from noncommercial sources or from

small quantity commercial sources as defined in Section 25158.1, stored, and ultimately transferred to a licensed hazardous waste treatment, storage, or disposal facility.

(b) The tax provided for in Section 25345 shall not apply to hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 2426 or by county agricultural commissioners if the hazardous wastes result from their control activities and if they comply with the requirements of Chapter 6.5 (commencing with Section 25100) and regulations adopted pursuant thereto.

(c) The recordkeeping requirements of Section 25342 and the tax provided for in Section 25345 do not apply to hazardous waste disposed of, or submitted for disposal, if the hazardous waste meets all of the following requirements:

(1) The hazardous waste was located on the property of a landowner who did not produce, generate, or deposit the hazardous waste on the property.

(2) The hazardous waste was removed from the property and disposed of, before September 25, 1981, at a facility licensed by the department, the landowner paid for the costs of that removal and disposal, and the removal and disposal was carried out pursuant to permits issued by, or under the direction of, the department or a local agency.

(3) The landowner removed and disposed of the hazardous waste for the purpose of developing the property with a housing development project, of which at least 15 percent of the total units are affordable to low- and moderate-income families, without the use of direct subsidies by the state or federal government.

(d) The recordkeeping requirements of Section 25342 and the tax provided for in Section 25345 do not apply to hazardous waste disposed of, or submitted for treatment, storage, or disposal, by any person, which are discovered and separated from solid waste as part of a load checking program.

SEC. 5. Section 25366.5 of the Health and Safety Code is amended to read:

25366.5. (a) Any public agency operating a hazardous waste collection program, as defined in Section 25345.5, or any person operating such a program under an agreement with a public agency, shall not be held liable in any cost recovery action brought pursuant to Section 25360 for any waste which has been properly handled and transported to an authorized hazardous waste treatment or disposal facility at a location other than that of the collection program.

(b) Except as provided in subdivision (a), this section does not affect or modify the obligations or liabilities of any person imposed pursuant to any state or federal law.

SEC. 6. Section 3 of this bill incorporates amendments to Section 25205.1 of the Health and Safety Code proposed by both this bill and AB 2794. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends

Section 25205.1 of the Health and Safety Code, and (3) this bill is enacted after AB 2794, in which case Section 2 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1266

An act to amend Sections 25174.7, 25205.1, 25205.7, and 25345.5 of, and to add Section 25158.1 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 25158.1 is added to the Health and Safety Code, to read:

25158.1. (a) The department shall allow any county, city, or special district which operates a program for the collection, treatment, recycling, or disposal of hazardous wastes generated by households, or any person operating a household hazardous waste collection program under an agreement with a public agency, to allow small quantity commercial sources which comply with subdivision (c) of Section 25163 to participate in the program.

(b) A public agency which operates a household hazardous waste collection program, or any person operating a household hazardous waste collection program under an agreement with a public agency, which accepts hazardous waste from small quantity commercial sources pursuant to this section shall not accept more than 100 kilograms of hazardous waste per month, or, for halogenated organic compounds, not more than 50 kilograms of hazardous waste shall be accepted from any one small quantity commercial source at such a program.

(c) A public agency, or any person operating a household hazardous waste collection program under an agreement with a public agency, which accepts hazardous waste from small quantity commercial sources at a household hazardous waste collection program pursuant to this section may charge businesses using the

collection program a fee based upon the cost to the public agency or person of operating the collection program.

(d) For the purposes of this section, "small quantity commercial source" means a business which generates less than 100 kilograms of hazardous waste per month, or, if the hazardous waste consists of halogenated organic compounds, less than 50 kilograms of hazardous waste per month.

The department shall determine whether the quantity limits established by this subdivision adequately provide for the environmentally safe and effective operation of household hazardous waste collection programs which accept hazardous waste from small quantity commercial sources.

(e) The department shall adopt regulations for household hazardous waste collection programs which accept hazardous waste from small quantity commercial sources. The regulations shall provide for the compliance of these programs with the applicable provisions of this chapter, and shall facilitate and promote the recycling of hazardous waste over other waste management alternatives, the safe transport of hazardous waste to collection programs, and the compliance of participating generators with the monthly quantity limitations established by subdivision (d).

SEC. 2. Section 25174.7 of the Health and Safety Code is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1, 25174.6, and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a state or local agency, or its contractor, removes or remedies a release of hazardous waste caused by another person. This paragraph applies to all acts performed by a state or local agency, or its contractor, on or after July 1, 1984.

(2) Hazardous wastes generated or disposed of by a public agency operating a household hazardous waste collection program, or by any person operating a household hazardous waste collection program under an agreement with a public agency, or by a household hazardous waste collection program receiving hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 2426 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(4) Hazardous wastes, disposed of, or submitted for disposal or treatment, by any person, which are discovered and separated from solid waste as part of a load checking program.

(b) This section does not prevent the department from recovering an amount equal to the full cost of the fees specified in Sections 25174.1 and 25174.6 from any person responsible for a release of hazardous waste which has been removed or remedied by a state

or local agency, or its contractor. This section does not limit the department's remedies pursuant to any other provision of law.

(c) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is exempt from the fees imposed pursuant to Sections 25174.1, 25205.5, and 25345, in connection with the removal of the tank.

SEC. 3. Section 25174.7 of the Health and Safety Code is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1, 25174.6, and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a state or local agency, or its contractor, removes or remedies a release of hazardous waste caused by another person. This paragraph applies to all acts performed by a state or local agency, or its contractor, on or after July 1, 1984.

(2) Hazardous wastes generated or disposed of by a public agency operating a household hazardous waste collection program, or by any person operating a household hazardous waste collection program under an agreement with a public agency, or by a household hazardous collection program receiving hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 2426 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(4) Hazardous wastes, disposed of, or submitted for disposal or treatment, by any person, which are discovered and separated from solid waste as part of a load checking program.

(b) On and after July 1, 1984, persons who remedy a release of hazardous waste which has been removed or remedied pursuant to a remedial action plan issued pursuant to Section 25356.1, within one year after the issuance of the plan, are not subject to the fee specified in Section 25174.1 with respect to hazardous waste generated in the course of that removal or remedial action, if the original release did not result from willful misconduct by the responsible person.

(c) This section does not prevent the department from recovering an amount equal to the full cost of the fees specified in Sections 25174.1 and 25174.6 from any person responsible for a release of hazardous waste which has been removed or remedied by a state or local agency, or its contractor. This section does not limit the department's remedies pursuant to any other provision of law.

(d) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is

exempt from the fees imposed pursuant to Sections 25174.1, 25205.5, and 25345, in connection with the removal of the tank.

SEC. 4. Section 25205.1 of the Health and Safety Code is amended to read:

25205.1. For purposes of this article the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any structure, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued a permit or a grant of interim status by the department pursuant to Article 9 (commencing with Section 25200) or which is operated in such a manner that the facility is required to obtain a permit or grant of interim status. "Facility" does not include either of the following:

(1) Any facility operated by a local government agency, or by any person operating a hazardous waste collection program under an agreement with a public agency, which is used for any of the following:

(A) Household hazardous waste collection.

(B) The collection of hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(C) Hazardous wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(2) That portion of a solid waste management facility permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code, which is used for the segregation, handling, and storage of hazardous waste separated from solid waste loads received by the facility, pursuant to a load checking program.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(d) "Large treatment facility" means a treatment facility which treats or recycles 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(e) "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1988, in those amounts specified in subdivision (b) of Section 25205.5 at an individual site commencing on or after July 1, 1988, and who has not paid a hazardous waste facility fee for that same individual site.

(f) "Ministorage facility" means a storage facility which stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(g) "Minitreatment facility" means a treatment facility which treats or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(h) "Site" means the location of an operation which generates hazardous wastes and which is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility" means a storage facility which stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month.

(j) "Small treatment facility" means a treatment facility which treats or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month.

SEC. 5. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit by regulation governed by this chapter or the regulations adopted pursuant to this chapter, which shall be due and payable upon the facility's notification to the department of its intent to operate in this manner. Except as provided in subdivision (i), the board shall not assess a fee pursuant to this section for an application for a hazardous waste facilities permit for a hazardous waste facility which has been previously operating pursuant to a grant of interim status pursuant to Section 25200.5. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (i), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or notification to the department.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator for which the permit was required on or before July 1, 1989, shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility. A person submitting a hazardous waste

facilities permit application for any other incinerator shall pay a fee in accordance with subdivision (e). If the application was submitted before July 1, 1989, the fees specified in this subdivision shall not apply, and the fees specified in subdivision (e) shall instead apply.

(e) A person submitting a hazardous waste facilities permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter, and eight thousand dollars ($8,000) for all other variances. If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(h) A person notifying the department that a facility intends to conform with the requirements for a permit by regulation shall pay one thousand dollars ($1,000).

(i) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(j) (1) A person requesting a permit modification shall pay a fee equal to 70 percent of the fee for a new hazardous waste facilities permit for that facility, or 50 percent of the fee for a new permit for a land disposal facility or an incinerator, if the department's regulations require public notice and public comment before that modification may go into effect.

(2) Except as provided in paragraph (3), a person requesting any other permit modification not subject to paragraph (1) shall pay a fee of one thousand five hundred dollars ($1,500).

(3) A facility which applies for a new hazardous waste facilities permit, and which has been previously operating pursuant to a grant of interim status, or a facility which applies to renew a hazardous waste facilities permit, shall pay the fee specified in paragraph (1) if the applicant requests any modification for which, if the facility was permitted, the department's regulations would require public notice and public comment before the modification could go into effect.

(k) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(*l*) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(m) The fees assessed pursuant to this section do not apply to any variance or permit issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility or for a household hazardous waste facility receiving hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

SEC. 6. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit by regulation governed by this chapter or the regulations adopted pursuant to this chapter, which shall be due and payable upon the facility's notification to the department of its intent to operate in this manner. Except as provided in subdivision (i), the board shall not assess a fee pursuant to this section for an application for a hazardous waste facilities permit for a hazardous waste facility which has been previously operating pursuant to a grant of interim status pursuant to Section 25200.5. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (i), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or notification to the department.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator for which the permit was required on or before July 1, 1989, shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility. A person submitting a hazardous waste facilities permit application for any other incinerator shall pay a fee in accordance with subdivision (e). If the application was submitted before July 1, 1989, the fees specified in this subdivision shall not apply, and the fees specified in subdivision (e) shall instead apply.

(e) A person submitting a hazardous waste facilities permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter, and eight thousand dollars ($8,000) for all other variances. If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(h) A person required to notify the department of the person's intent to operate a facility pursuant to a permit by regulation shall pay one thousand dollars ($1,000) for each initial notification and not more than one thousand dollars ($1,000) for each notification

thereafter, as specified, in the regulations adopted by the department.

(i) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(j) (1) A person requesting a permit modification shall pay a fee equal to 70 percent of the fee for a new hazardous waste facilities permit for that facility, or 50 percent of the fee for a new permit for a land disposal facility or an incinerator, if the department's regulations require public notice and public comment before that modification may go into effect.

(2) Except as provided in paragraph (3), a person requesting any other permit modification not subject to paragraph (1) shall pay a fee of one thousand five hundred dollars ($1,500).

(3) A facility which applies for a new hazardous waste facilities permit, and which has been previously operating pursuant to a grant of interim status, or a facility which applies to renew a hazardous waste facilities permit, shall pay the fee specified in paragraph (1) if the applicant requests any modification for which, if the facility was permitted, the department's regulations would require public notice and public comment before the modification could go into effect.

(k) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(*l*) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(m) The fees assessed pursuant to this section do not apply to any variance or permit issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility or from a household hazardous waste facility receiving hazardous waste from small quantity commercial sources pursuant to Section 25258.1.

SEC. 7. Section 25345.5 of the Health and Safety Code is amended to read:

25345.5. (a) The recordkeeping requirements of Section 25342 and the tax provided for in Section 25345 do not apply to hazardous

wastes collected by any public agency or any person operating a hazardous waste collection program under an agreement with a public agency, if the waste results from a hazardous waste collection program which complies with all requirements of Chapter 6.5 (commencing with Section 25100) and regulations adopted pursuant thereto. For the purposes of this subdivision, "hazardous waste collection program" means a program in which small quantities of hazardous wastes are received from noncommercial sources or from small quantity commercial sources as defined in Section 25158.1, stored, and ultimately transferred to a licensed hazardous waste treatment, storage, or disposal site.

(b) The tax provided for in Section 25345 shall not apply to hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 2426 or by county agricultural commissioners if the hazardous wastes result from their control activities and if they comply with the requirements of Chapter 6.5 (commencing with Section 25100) and regulations adopted pursuant thereto.

(c) The recordkeeping requirements of Section 25342 and the tax provided for in Section 25345 do not apply to hazardous waste disposed of, or submitted for disposal, if the hazardous waste meets all of the following requirements:

(1) The hazardous waste was located on the property of a landowner who did not produce, generate, or deposit the hazardous waste on the property.

(2) The hazardous waste was removed from the property and disposed of, before September 25, 1981, at a facility licensed by the department, the landowner paid for the costs of that removal and disposal, and the removal and disposal was carried out pursuant to permits issued by, or under the direction of, the department or a local agency.

(3) The landowner removed and disposed of the hazardous waste for the purpose of developing the property with a housing development project, of which at least 15 percent of the total units are affordable to low- and moderate-income families, without the use of direct subsidies by the state or federal government.

(d) The recordkeeping requirements of Section 25342 and the tax provided for in Section 25345 do not apply to hazardous wastes disposed of, or submitted for treatment, storage, or disposal, by any person, which are discovered and separated from solid waste as part of a load checking program.

SEC. 8. Section 3 of this bill incorporates amendments to Section 25174.7 of the Health and Safety Code proposed by both this bill and SB 1857. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 25174.7 of the Health and Safety Code, and (3) this bill is enacted after SB 1857, in which case Section 2 of this bill shall not become operative.

SEC. 9. Section 6 of this bill incorporates amendments to Section

25205.7 of the Health and Safety Code proposed by both this bill and AB 3856. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 25205.7 of the Health and Safety Code, and (3) this bill is enacted after AB 3856, in which case Section 5 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 1267

An act to amend Sections 25174, 25178.1, 25205.1, 25205.5, 25205.7, and 25221 of, to add Sections 25187.2 and 25205.9 to, and to repeal Section 25244.25 of, the Health and Safety Code, and to amend Sections 43101 and 43551 of, and to add Sections 43008.1, 43055, and 43152.9 to, the Revenue and Taxation Code, relating to hazardous waste.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 25, 1990.]

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

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

25174. (a) There is in the General Fund a Hazardous Waste Control Account which shall be administered by the director. In addition to any other moneys transferred by the Legislature to the Hazardous Waste Control Account, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to Sections 25187.2, 25205.2, 25205.5, 25205.6, 25205.7, 25205.8, and 25221.

(2) The surcharges collected pursuant to Section 25205.9.

(3) The amount of fees collected pursuant to Section 2560 of the Vehicle Code, as allocated by Section 25168.6.

(4) Any interest earned upon the money deposited in the Hazardous Waste Control Account

(5) Any moneys received from the federal government pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(6) Any fines or penalties collected pursuant to this chapter.

(b) The funds deposited in the Hazardous Waste Control Account may be expended by the department, upon appropriation by the Legislature, for the following purposes:

(1) The administration of this chapter by the department and state operational costs.

(2) To the State Board of Equalization to pay refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and Taxation Code.

(3) To the State Board of Equalization to pay any refunds due relating to the surcharges collected pursuant to Section 43055 of the Revenue and Taxation Code.

(4) The costs of environmental epidemiology and health effects studies related to toxic substances, including extremely hazardous waste, as defined in Section 25115, and hazardous waste, as defined in Section 25117.

(5) The support of the Toxic Substance Enforcement Program in the office of the Attorney General.

(6) The costs incurred in the administration of Section 13227 of the Water Code and costs incurred as a result of inspection of underground storage tanks and related enforcement costs pursuant to Section 13301 of the Water Code. It is the intent of the Legislature that funds be annually appropriated in the Budget Act from the Hazardous Waste Control Account to the State Water Resources Control Board for all costs incurred by the board in administering Sections 13227 and 13301 of the Water Code.

(7) The costs of water monitoring pursuant to Section 4026.1.

(8) To the Office of Emergency Services for the support of the state's program to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.). It is the intent of the Legislature that the funds be annually appropriated in the Budget Act from the Hazardous Waste Control Account to the Office of Emergency Services for the costs incurred by the office in the implementation of the Emergency Planning and Community Right-to-Know Act of 1986.

SEC. 2. Section 25178.1 of the Health and Safety Code is amended to read:

25178.1. (a) The Auditor General shall submit a report to the Legislature on or before November 1, 1987, on the hazardous waste fees system and the Toxic Substances Control Program of the department. The report shall include information on the following:

(1) Data on regulatory activities paid for by previous Hazardous Waste Control Account expenditures, for the past three years, *including all of the following information:*

(A) The number of hazardous waste facility permits reviewed and issued. The permits shall be classified by the type of facility, including the following data:

(i) The average cost to review and issue permits.

(ii) The average time to review and issue permits.

(B) A listing of all hazardous waste facilities, by type of facility, which have undergone surveillance activities.

(C) A listing of all hazardous waste facilities by type of facility, which have been subject to enforcement action.

(2) The expenditures incurred from the Hazardous Waste Control Account and the Hazardous Substance Account for the department's regulation of specific industries.

(3) Identification of taxes paid to the Hazardous Waste Control Account and the Hazardous Substance Account by each type of industry, and also by each type of facility.

(4) The department's cost allocation and budget procedures for regulatory activities.

(5) Methodologies for the department to identify generators of 500 pounds or more of hazardous waste per year in counties with memoranda of understanding with the department and in counties without memoranda of understanding with the department.

"Hazardous waste facility" for purposes of subdivisions (b) and (c) of paragraph (1) and paragraphs (2) and (3) shall include hazardous waste generators.

(b) The sum of fifty thousand dollars ($50,000) which was appropriated to the department pursuant to Section 8 of Chapter 113 of the Statutes of 1985, is hereby reappropriated to the Joint Legislative Audit Committee of the Legislature for transfer to the Auditor General for the costs of preparing the report required by this section.

(c) The State Board of Equalization shall provide quarterly reports to the Legislature on the fees collected pursuant to Sections 25205.2 and 25205.5, and the surcharges collected pursuant to Section 25205.9. The reports shall be due on the 15th day of the second month following each quarter.

SEC. 3. Section 25178.1 of the Health and Safety Code is amended to read:

25178.1. The State Board of Equalization shall provide quarterly reports to the Legislature on the fees collected pursuant to Sections 25174.1, 25205.2, and 25205.5 and the surcharges collected pursuant to Section 25205.9. The reports shall be due on the 15th day of the second month following each quarter.

SEC. 4. Section 25187.2 is added to the Health and Safety Code, to read:

25187.2. If a removal or remedial action order issued pursuant to Section 25187 to a potentially responsible party requires a person to take corrective action with respect to hazardous waste, that person shall pay the applicable fees specified in Section 25347.6 for oversight of the removal or remedial action. However, notwithstanding subdivision (a) of Section 25347.6, any fees collected pursuant to this section shall be deposited in the Hazardous Waste Control Account, unless the person is required to take the same removal or remedial action pursuant to Section 25355.5 or an order issued pursuant to subdivision (a) of Section 25358.3. This section does not prohibit the

department from assessing any other penalty or recovering any costs for oversight of a removal or remedial action, pursuant to any other provision, except that any fees paid pursuant to this section shall be credited for those costs. Nothing in this section limits the due process requirements of Section 25187.

SEC. 5. Section 25205.1 of the Health and Safety Code is amended to read:

25205.1. For purposes of this article the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any structure, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued a permit or a grant of interim status by the department pursuant to Article 9 (commencing with Section 25200) or which is operated in such a manner that the facility is required to obtain a permit or grant of interim status. "Facility" does not include either of the following:

(1) Any facility operated by a local government agency, or by any person operating a hazardous waste collection program under an agreement with a public agency, which is used for any of the following:

(A) Household hazardous waste collection.

(B) The collection of hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(C) Hazardous wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7

(2) That portion of a solid waste management facility permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code, which is used for the segregation, handling, and storage of hazardous waste separated from solid waste loads received by the facility, pursuant to a load checking program.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(d) "Large treatment facility" means a treatment facility which treats or recycles 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(e) "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1988, in those amounts specified in subdivision (b) of Section 25205.5 at an individual site commencing on or after July 1, 1988.

(f) "Mini storage facility" means a storage facility which stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(g) "Mini treatment facility" means a treatment facility which treats or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(h) "Site" means the location of an operation which generates

hazardous wastes and which is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility" means a storage facility which stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month.

(j) "Small treatment facility" means a treatment facility which treats or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month.

SEC. 6. Section 25205.1 of the Health and Safety Code is amended to read:

25205.1. For purposes of this article the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any structure, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued a permit or a grant of interim status by the department pursuant to Article 9 (commencing with Section 25200) or which is operated in such a manner that the facility is required to obtain a permit or grant of interim status. "Facility" does not include either of the following:

(1) Any facility operated by a local government agency, or by any person operating a hazardous waste collection program under an agreement with a public agency, which is used for any of the following:

(A) Household hazardous waste collection.

(B) The collection of hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(C) Hazardous wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(2) That portion of a solid waste management facility permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code, which is used for the segregation, handling, and storage of hazardous waste separated from solid waste loads received by the facility, pursuant to a load checking program.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(d) "Large treatment facility" means a treatment facility which treats or recycles 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(e) "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1988, in those amounts specified in subdivision (b) of Section 25205.5 at an individual site commencing on or after July 1, 1988.

(f) Ministorage facility" means a storage facility which stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(g) "Minitreatment facility" means a treatment facility which

treats or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(h) "Site" means the location of an operation which generates hazardous wastes and which is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility" means a storage facility which stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month.

(j) "Small treatment facility" means a treatment facility which treats or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month.

SEC. 7.

SEC. 8. Section 25205.4 of the Health and Safety Code is amended to read:

25205.4. (a) The base rate for the facility fee imposed by Section 25205.2 is twenty thousand dollars ($20,000). This base rate is the base rate for the 1989–90 fiscal year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) In computing the facility fees, all of the following shall apply:

(1) The fee provided pursuant to Section 25205.2 to be paid by a mini storage facility shall equal 25 percent of the base facility rate.

(2) The fee provided pursuant to Section 25205.2 to be paid by a small storage facility shall equal the base facility rate.

(3) The fee charged a large storage facility shall equal twice the base facility rate.

(4) The fee charged a mini treatment facility shall equal 50 percent of the base facility rate.

(5) The fee charged a small treatment facility shall equal twice the base facility rate.

(6) The fee charged a large treatment facility shall equal three times the base facility rate.

(7) The fee charged a disposal facility until closure is approved shall equal 10 times the base facility rate.

(8) The fee charged a facility with a postclosure permit shall be seven thousand five hundred dollars ($7,500) annually for a small facility, fifteen thousand dollars ($15,000) annually for a medium facility, and twenty-two thousand five hundred dollars ($22,500) for a large facility during the first five years of the postclosure period. The fee charged for a facility with a postclosure permit during the remaining years of the postclosure care period shall be four thousand dollars ($4,000) annually for a small facility, eight thousand dollars ($8,000) annually for a medium facility, and thirteen thousand five

hundred dollars ($13,500) annually for a large facility.

(d) If a facility falls into more than one category listed in subdivision (c), multiple operations under a single hazardous waste facility permit or grant of interim status fall into more than one category listed in subdivision (c), the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 9. Section 25205.5 of the Health and Safety Code is amended to read:

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, every generator of hazardous waste, in the amounts specified in subdivision (b), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee, as specified in Section 25205.2, for each specific site, for the fiscal year which commenced during the calendar year for which the generator fee is due.

(b) Within 30 days of the enactment of the annual Budget Act, the board shall establish the generator fee specified in subdivision (a), as adjusted pursuant to subdivision (c), to be paid by generators subject to this section.

The base fee rate is two thousand four hundred dollars ($2,400).

(1) Each generator who generates an amount equal to, or more than, 5 tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.

(2) Each generator who generates an amount equal to or more than 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.

(c) The base rate established pursuant to subdivision (b) is the base rate for the 1989–90 fiscal year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the

federal government.

(d) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Any hazardous materials which are recycled, and used onsite, and are not transferred offsite, are not hazardous wastes for purposes of this section.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 10. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit by regulation governed by this chapter or the regulations adopted pursuant to this chapter, which shall be due and payable upon the facility's notification to the department of its intent to operate in this manner. Except as provided in subdivisions (i) and (k), the board shall not assess a fee pursuant to this section for an application for a hazardous waste facilities permit for a hazardous waste facility which has been previously operating pursuant to a grant of interim status pursuant to Section 25200.5. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (i), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or notification to the department.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator for which the permit was required on

or before July 1, 1989, shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility. A person submitting a hazardous waste facilities permit application for any other incinerator shall pay a fee in accordance with subdivision (e). If the application was submitted before July 1, 1989, the fees specified in this subdivision shall not apply, and the fees specified in subdivision (e) shall instead apply.

(e) A person submitting a hazardous waste facilities permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) (1) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter, and eight thousand dollars ($8,000) for all other variances. If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3, modification, as specified in paragraph (4) of subdivision (j).

(3) Any variance granted pursuant to Article 6.6 (commencing with Section 66565) of Chapter 30 of Division 4 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) A person notifying the department that a facility intends to conform with the requirements for a permit by regulation shall pay one thousand dollars ($1,000).

(i) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(j) (1) A person requesting a class 1 permit modification, as defined in the regulations, for an operating facility, shall pay a fee of

one thousand five hundred dollars ($1,500).

(2) A person requesting a class 2 permit modification, as defined in the regulations, for an operating facility, shall pay a fee equal to 35 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 25 percent of the fee for a new permit for a land disposal facility or an incinerator.

(3) A person requesting a class 3 permit modification, as defined in the regulations, for an operating facility, shall pay a fee equal to 70 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 50 percent of the fee for a new permit for a land disposal facility or an incinerator.

(4) Until the effective date of the regulations adopted by the department which define class 1, class 2, and class 3 permit modifications, the definitions contained in Appendix I of Section 270.42 of Title 40 of the Code of Federal Regulations shall be used for the purpose of determining the appropriate fee pursuant to this section.

(k) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit approval.

(1) A person submitting a hazardous waste facilities permit application for a postclosure permit for a land disposal facility which, prior to issuance, operates pursuant to a hazardous waste facilities permit granted by the department pursuant to Section 25200, shall pay a fee of eight thousand dollars ($8,000) for a small facility, eighteen thousand dollars ($18,000) for a medium facility, and thirty thousand dollars ($30,000) for a large facility.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit for any other facility required to perform postclosure care shall pay a fee of fifty thousand dollars ($50,000) for a small facility, one hundred one thousand dollars ($101,000) for a medium facility, and one hundred seventy-nine thousand dollars ($179,000) for a large facility. However, if the facility seeking a postclosure permit is under a correction action or remediation order or agreement with a state or federal agency, the fees specified in paragraph (1) shall apply.

(3) For purposes of this subdivision, facility size is based on the largest amount of waste remaining after closure of the facility during the fiscal year for which the fee is assessed.

(*l*) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(m) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(n) The fees assessed pursuant to this section do not apply to any variance or permit issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility or from a household hazardous waste facility receiving hazardous waste from small quantity commercial sources pursuant to Section 25258.1.

SEC. 11. Section 25205.7 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit by regulation governed by this chapter or the regulations adopted pursuant to this chapter, which shall be due and payable upon the facility's notification to the department of its intent to operate in this manner. Except as provided in subdivisions (i) and (k), the board shall not assess a fee pursuant to this section for an application for a hazardous waste facilities permit for a hazardous waste facility which has been previously operating pursuant to a grant of interim status pursuant to Section 25200.5. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (i), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or notification to the department.

(c) A person submitting a hazardous waste facilities permit

application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator for which the permit was required on or before July 1, 1989, shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility. A person submitting a hazardous waste facilities permit application for any other incinerator shall pay a fee in accordance with subdivision (e). If the application was submitted before July 1, 1989, the fees specified in this subdivision shall not apply, and the fees specified in subdivision (e) shall instead apply.

(e) A person submitting a hazardous waste facilities permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) (1) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter, and eight thousand dollars ($8,000) for all other variances. If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3 modification, as specifed in paragraph (4) of subdivision (j).

(3) Any variance granted pursuant to Article 6.6 (commencing with Section 66565) of Chapter 30 of Division 4 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) A person required to notify the department of the person's intent to operate a facility pursuant to a permit by regulation shall

pay one thousand dollars ($1,000) for each initial notification and not more than one thousand dollars ($1,000) for each notification thereafter, as specified in the regulations adopted by the department.

(i) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(j) (1) A person requesting a class 1 permit modification, as defined in the regulations, for an operating facility, shall pay a fee of one thousand five hundred dollars ($1,500).

(2) A person requesting a class 2 permit modification, as defined in the regulations for an operating facility, shall pay a fee equal to 35 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 25 percent of the fee for a new permit for a land disposal facility or an incinerator.

(3) A person requesting a class 3 permit modification, as defined in the regulations, for an operating facility, shall pay a fee equal to 70 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 50 percent of the fee for a new permit for a land disposal facility or an incinerator.

(4) Until the effective date of the regulations adopted by the department which define class 1, class 2, and class 3 permit modifications, the definitions contained in Appendix I of Section 270.42 of Title 40 of the Code of Federal Regulations shall be used for the purpose of determining the appropriate fee pursuant to this section.

(k) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit approval.

(1) A person submitting a hazardous waste facilities permit application for a postclosure permit for a land disposal facility which, prior to issuance, operates pursuant to a hazardous waste facilities permit granted by the department pursuant to Section 25200, shall pay a fee of eight thousand dollars ($8,000) for a small facility, eighteen thousand dollars ($18,000) for a medium facility, and thirty thousand dollars ($30,000) for a large facility.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit for any other facility required to perform postclosure care shall pay a fee of fifty thousand dollars ($50,000) for a small facility, one hundred one thousand dollars ($101,000) for a medium facility, and one hundred seventy-nine thousand dollars ($179,000) for a large facility. However, if the facility seeking a postclosure permit is under a corrective action or remediation order, or agreement with a state or federal agency, the fees specified in paragraph (1) shall apply.

(3) For purposes of this subdivision, facility size is based on the largest amount of waste remaining after closure of the facility during

the fiscal year for which the fee is assessed.

(*l*) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(m) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(n) The fees assessed pursuant to this section do not apply to any variance or permit issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility or from a household hazardous waste facility receiving hazardous waste from small quantity commercial sources pursuant to Section 25258.1.

SEC. 12. Section 25205.9 is added to the Health and Safety Code, to read:

25205.9. (a) In addition to the fees imposed by Section 25205.5, every generator of hazardous waste, including, but not limited to, generators who are exempt from paying the fee imposed by Section 25205.5 because they have paid facility fees, shall pay to the board, in the amounts specified in subdivision (b), a surcharge for each generator site for each calendar year, or portion thereof. The rates specified in subdivision (b) are for the 1990–91 fiscal year and the board shall adjust the surcharge annually to reflect increases or decreases in the cost of living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government. For purposes of this chapter, the surcharge imposed by this section shall be known as the waste reporting surcharge.

(b) The amount of the surcharge shall be one of the following:

(1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay six dollars ($6).

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay forty-eight dollars ($48).

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the

prior calendar year shall pay one hundred twenty dollars ($120).

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay six hundred dollars ($600).

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay one thousand two hundred dollars ($1,200).

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than, 2,000 tons, of hazardous waste during the prior calendar year shall pay one thousand eight hundred dollars ($1,800).

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay two thousand four hundred dollars ($2,400).

(c) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code

(d) The board shall deposit the surcharges collected pursuant to subdivisions (a) and (c) in the Hazardous Waste Control Account, created in Section 25174. The surcharges deposited in the account may be expended by the department, upon appropriation by the Legislature, for the purposes specified in Article 11.9 (commencing with Section 25244.12).

SEC. 13. Section 25221 of the Health and Safety Code is amended to read:

25221. (a) Any person as owner, lessor, or lessee who (1) knows, or has probable cause to believe, that a significant disposal of hazardous waste has occurred on, under, or into the land which he or she owns or leases or that the land is within 2,000 feet of a significant disposal of hazardous waste, and (2) intends to construct or allow the construction on that land of a building or structure to be used for a purpose which is described in subdivision (b) of Section 25232 within one year, shall apply to the department prior to construction for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

The addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property which do not change the use of the property or increase the population density does not constitute the construction of a building or structure for purposes of this subdivision.

(b) Any person who, as owner, lessor, or lessee, knows or has probable cause to believe that land which he or she owns or leases is a hazardous waste property or a border zone property, may apply to the department for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

(c) If a city or county knows or has probable cause to believe that

any land within its jurisdiction is a hazardous waste property or a border zone property, the city or county may apply to the department for a determination as to whether that land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

(d) Subdivisions (a), (b), and (c) do not apply to any land on which a determination has previously been made pursuant to Section 25222.1 or 25229, unless either of the following has occurred since that determination:

(1) A significant new disposal of hazardous waste has occurred on, under, or into the land.

(2) Significant new information about past disposal of hazardous waste on, or within 2,000 feet of, the land becomes known to the owner, lessor, or lessee of the land or to the city or county.

(e) (1) The board shall assess a fee of seven thousand five hundred dollars ($7,500) on any person who applies for a determination as to whether land should be designated a hazardous waste property or a border zone property pursuant to Section 25221, upon a determination by the department that a preliminary endangerment assessment, as defined in Section 25319.5, is needed in order to make that determination. Subsequent to the evaluation of the preliminary endangerment assessment, if the department determines that a risk assessment is needed to make that determination, an additional fee of seven thousand five hundred dollars ($7,500) shall be assessed on the applicant. Any fee paid under this section shall be credited to costs incurred pursuant to Section 25222.1.

(2) The amount stated in this subdivision shall be a base rate for the 1989–90 fiscal year. Thereafter, the fee shall be annually adjusted to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government.

(3) The board shall deposit the fee collected pursuant to paragraph (1) in the Hazardous Waste Control Account, created in Section 25174.

(4) This subdivision does not apply to a border zone property determination regarding any property which is less than five acres in size, if the person making the request demonstrates, using current planning documents, that the land is to be used solely for residential use of not more than four separate family units.

SEC 14. Section 25244.25 of the Health and Safety Code is repealed.

SEC. 15. Section 43008.1 is added to the Revenue and Taxation Code, to read:

43008.1. Any surcharge administered and collected by the board pursuant to this part is considered a tax for purposes of this part.

SEC. 16. Section 43055 is added to the Revenue and Taxation Code, to read:

43055. The surcharges imposed pursuant to Section 25205.9 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 17. Section 43101 of the Revenue and Taxation Code is amended to read:

43101. Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25174 of the Health and Safety Code or imposed pursuant to Section 25174.1 or 25345 of the Health and Safety Code, or the surcharges imposed pursuant to Section 25205.9 of the Health and Safety Code, shall register with the board on forms provided by the board.

SEC. 18. Section 43101 of the Revenue and Taxation Code is amended to read:

43101. Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25174 of the Health and Safety Code or imposed pursuant to Section 25174.1 of the Health and Safety Code or the surcharge imposed pursuant to Section 25205 9 of the Health and Safety Code shall register with the board on forms provided by the board.

SEC. 19. Section 43152.9 is added to the Revenue and Taxation Code, to read:

43152.9. (a) The surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code, which is collected and administered under Section 43055, is due and payable to the board on the last day of the month following the end of the calendar year.

(b) The surcharge shall be incorporated into the return form prescribed by the board, which every operator subject to the fee imposed pursuant to Section 25205.5 of the Health and Safety Code is required to file and pay annually, in accordance with Section 43152.7. The surcharge shall be in addition to the fee imposed by Section 25205.5.

(c) The surcharge imposed by Section 25205.9 of the Health and Safety Code shall be offset by any fees paid by the generator during the preceding calendar year for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department. The offset provided for under this subdivision shall be allowed to the same extent as the offset provided in subdivision (c) of Section 43152.7.

SEC. 20. Section 43551 of the Revenue and Taxation Code is amended to read:

43551. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Sections 43053 and 43055, shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Hazardous Waste Control Account.

SEC. 21. Section 43551 of the Revenue and Taxation Code is amended to read:

43551. (a) All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Section 43053 and 43055, shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Hazardous Waste Control Account.

(b) Notwithstanding subdivision (a), the board shall transmit the payments made pursuant to Section 429.13 of the Health and Safety Code to the Treasurer to be deposited in the State Treasury to the credit of the Occupational Lead Poisoning Prevention Account established pursuant to subdivision (f) of Section 429.13 of the Health and Safety Code.

SEC. 22. Section 3 of this bill incorporates amendments to Section 25178.1 of the Health and Safety Code proposed by both this bill and SB 1857. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 25178.1 of the Health and Safety Code, and (3) this bill is enacted after SB 1857, in which case Section 2 of this bill shall not become operative.

SEC 23. Section 6 of this bill incorporates amendments to Section 25205.1 of the Health and Safety Code proposed by both this bill and AB 2597. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 25205.1 of the Health and Safety Code, and (3) this bill is enacted after AB 2597, in which case Section 5 of this bill shall not become operative.

SEC. 24. Section 11 of this bill incorporates amendments to Section 25205.7 of the Health and Safety Code proposed by both this bill and AB 3856. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 25205.7 of the Health and Safety Code, and (3) this bill is enacted after AB 3856, in which case Section 10 of this bill shall not become operative.

SEC. 25. Section 18 of this bill incorporates amendments to Section 43101 of the Revenue and Taxation Code proposed by both this bill and SB 1857. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 43101 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1857, in which case Section 17 of this bill shall not become operative.

SEC. 26. Section 21 of this bill incorporates amendments to Section 43551 of the Revenue and Taxation Code proposed by both this bill and SB 1627. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 43551 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1627, in which case Section 20 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 1268

An act to amend Sections 25118, 25174.2, 25174.6, 25174.7, 25175, 25178.1, 25205.6, 25313.5, 25317.5, 25319, 25330, 25360, and 25395 of, to amend and repeal Section 25345.3 of, and to repeal and add Article 4 (commencing with Section 25340) of Chapter 6.8 of Division 20 of, the Health and Safety Code, and to amend Sections 43002.3, 43006, 43012, 43101, 43151, and 43552 of, and to repeal Sections 43052 and 43152 of, the Revenue and Taxation Code, relating to hazardous materials, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 25118 of the Health and Safety Code is amended to read:

25118. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

SEC. 2. Section 25174.2 of the Health and Safety Code is amended to read:

25174.2. (a) The State Board of Equalization shall set the base rate for the hazardous wastes specified in Section 25174.6 which are disposed of or submitted for disposal in the state or outside of the state, or is submitted for treatment at a location outside of the state on and after January 1, 1991, at one hundred five dollars ($105) per ton for disposal of hazardous waste to land.

(b) The base rate specified in subdivision (a) shall apply to persons subject to the fee specified in Section 25174.1. This base rate

is the base rate for the period of January 1, 1991, to December 31, 1991, and the balance of the 1991–92 fiscal year, and the 1992–93 and 1993–94 fiscal years. Beginning in fiscal year 1994–95, and for each fiscal year therafter, the State Board of Equalization shall adjust the base rate annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the United States Department of Labor or a successor agency of the federal government. Within 30 days after the enactment of the annual Budget Act, the State Board of Equalization shall send a notice of the adjusted fee rate to every person subject to the fee specified in Section 25174.1.

SEC. 3. Section 25174.6 of the Health and Safety Code is amended to read:

25174.6. (a) The fee provided pursuant to Section 25174.1 shall be determined as a percentage of the base rate, as adjusted by the State Board of Equalization, pursuant to Section 25174.2. The percentages of the base rate for determining these fees are as follows:

(1) Twenty-five percent of the base rate for each ton, or fraction thereof for up to the first 5,000 tons of hazardous waste disposed of, or submitted for disposal, in the state at each specific offsite facility by each producer, or at each specific onsite facility, per month, which is not subject to Subchapter III (commencing with Section 6921) of Chapter 82 of Title 42 of the United States Code, pursuant to subsection (b) of Section 6921 of Title 42 of the United States Code and which is not otherwise subject to the fee specified in paragraph (3) or (4), or hazardous waste for which the Administrator of the Environmental Protection Agency has determined that regulation is unwarranted, as specified in subparagraph (C) of paragraph (2) of, and subparagraph (C) of paragraph (3) of, subsection (b) of Section 6921 of Title 42 of the United States Code and which is not otherwise subject to the fee specified in paragraph (3) or (4).

(2) Thirteen percent of the base rate for each ton, or fraction thereof, for up to the first 5,000 tons of hazardous waste disposed of, or submitted for disposal, in the state, at each specific offsite facility by each producer, or at each specific onsite facility, per month, which result from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and the overburden from the mining of uranium ore and which is not otherwise subject to the fee specified in paragraph (3) or (4).

(3) Two hundred percent of the base rate for each ton, or fraction thereof, of extremely hazardous waste disposed of, or submitted for disposal, in the state.

(4) Two hundred percent of the base rate for each ton, or fraction thereof, of restricted hazardous wastes listed in Section 66900 of Title 22 of the California Code of Regulations disposed of, or submitted for disposal, in the state.

(5) One hundred percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, which is not otherwise subject to the fees specified in

paragraph (1), (2), (3), (4), (7), (8), or (9).

(6) The rates specified in this paragraph apply for each ton, or fraction thereof, of hazardous waste generated in this state which is disposed of, or submitted for disposal outside of the state or which is a hazardous waste residual of any treatment which occurs outside of the state other than incineration, dechlorination, or any treatment described in paragraph (7) or (9) and which is disposed of, or submitted for disposal, outside of the state. The rate shall be as follows:

(A) Thirty-five percent of the base rate for the 1989–90 fiscal year.

(B) Forty percent of the base rate for the 1990–91 fiscal year.

(C) Forty-five percent of the base rate after the 1990–91 fiscal year if a new hazardous waste disposal facility is permitted pursuant to Section 25200, or 40 percent of the base rate if no new facility is permitted.

(7) Five percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, that is a solid hazardous waste residue resulting from incineration or dechlorination. No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from incineration or dechlorination which is disposed of, or submitted for disposal, outside of the state.

(8) Five percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, that is solid hazardous waste residue resulting from any treatment method which results in free liquid removal, removal of volatile organic constituents, and a minimum waste volume reduction of 50 percent, and which has been approved by the department pursuant to Section 25179.6.

(9) The rates specified in this paragraph apply for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, outside of the state, that is solid hazardous waste residue resulting from any treatment method which results in free liquid removal, removal of volatile organic constituents, and a minimum waste volume reduction of 50 percent, and which has been approved by the department pursuant to Section 25179.6. The rate shall be as follows:

(A) Twenty-two and one-half percent of the base rate for the 1990–91 fiscal year.

(B) Twenty-five percent of the base rate after the 1990–91 fiscal year if a new hazardous waste disposal facility is permitted pursuant to Section 25200, or 22½ percent of the base rate if no new facility is permitted.

(b) The amount of fees payable to the State Board of Equalization pursuant to this section shall be calculated using the total wet weight, measured in tons or fractions thereof, of the hazardous waste in the form in which the hazardous waste existed at the time of disposal, submission for disposal, or application to land using the land disposal methods defined in Section 66122 of Title 22 of the California Code

of Regulations.

(c) All fees imposed by this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 4. Section 25174.7 of the Health and Safety Code is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1, 25174.6, and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a state or local agency, or its contractor, removes or remedies a release of hazardous waste caused by another person. This paragraph applies to all acts performed by a state or local agency, or its contractor, on or after July 1, 1984.

(2) Hazardous wastes generated or disposed of by a public agency operating a household hazardous waste collection program, or by any person operating a household hazardous waste collection program under an agreement with a public agency, or by a household hazardous waste collection program receiving hazardous waste from small quantity commercial sources pursuant to Section 25158.1.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 2426 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(4) Hazardous waste disposed of, or submitted for disposal or treatment, by any person, which is discovered and separated from solid waste as part of a load checking program.

(b) (1) If the original release did not result from willful misconduct by the responsible person, any person who has assumed responsibility for conducting a removal or remedial action at a hazardous substance release site in compliance with the time schedule set forth in the remedial action plan issued pursuant to Section 25356.1 shall be subject to a rate, as follows, with respect to the fee provided for in Sections 25174.1 and 25174.6 for the disposal of hazardous waste generated in the course of the removal or remedial action:

(A) From October 1, 1990, to June 30, 1991, 45 percent of the amount that would otherwise be due in the absence of the exemption provided by this subdivision.

(B) From July 1, 1991, to June 30, 1992, 55 percent of the amount that would otherwise be due in the absence of the exemption provided by this subdivision.

(2) For purposes of paragraph (1), a responsible person shall not be deemed out of compliance with the time schedule set forth in the remedial action plan unless a final determination of noncompliance with that time schedule has been made in accordance with paragraph (2) of subdivision (a) of Section 25355.5.

(3) The term "remedial action plan" as used in this subdivision

does not include an imminent and substantial endangerment order issued as an exception to the remedial action plan requirements pursuant to paragraph (1) of subdivision (g) of Section 25356.1.

(c) Notwithstanding paragraph (1) of subdivision (a), any person responsible for a release of hazardous waste, which has been removed or remedied by a state or local agency, or its contractor, shall pay the fee pursuant to Sections 25174.1 and 25174.6.

(d) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is exempt from the fees imposed pursuant to Sections 25174.1, 25205.5, and 25345, in connection with the removal of the tank.

SEC. 5. Section 25175 of the Health and Safety Code is amended to read:

25175. (a) The department shall prepare and adopt, and may revise when appropriate, a list of specified hazardous wastes which the department finds are economically and technologically feasible to recycle, taking into consideration the quantities of, concentrations of, and potential contaminants in, these hazardous wastes, the number and location of recycling facilities, and the proximity of these facilities to hazardous waste producers. The department may list a hazardous waste as recyclable only if the department makes a determination that at least one commercial recycler in California is ready, willing, and able to accept the hazardous waste for recycling at the time when the hazardous waste is listed. Whenever any waste on the list is disposed of by a person, the department may request, and the producer or disposer of that waste shall supply the department with, a formal, complete, and detailed statement justifying why the waste was not recycled. If the request is made of any entity listed in Section 25118 other than an individual, the statement shall be issued by the responsible management of that entity. The department shall keep confidential any trade secrets contained in any such statement.

(b) If, after receipt of the statement described in subdivision (a), the department finds the recycling of a hazardous waste to be economically and technologically feasible at the site of production, as determined by the site operator, or, if the department provides the name of a ready, willing, and able purchaser of the recyclable waste, the disposer of the hazardous waste shall recycle the hazardous waste by either of the above described methods. Failure to comply with an order to recycle by either of these methods shall result in the assessment of fees for disposal pursuant to Section 25174.1. The director may establish fees for the disposal of hazardous wastes determined to be recyclable in amounts which may be up to two times the base fee paid under the annual fee schedule established by the director.

SEC. 6. Section 25178.1 of the Health and Safety Code is amended to read:

25178.1. The State Board of Equalization shall provide quarterly reports to the Legislature on the fees collected pursuant to Sections 25174.1, 25205.2, and 25205.5. The reports shall be due on the 15th day of the second month following each quarter.

SEC. 6.5. Section 25178.1 of the Health and Safety Code is amended to read:

25178.1. The State Board of Equalization shall provide quarterly reports to the Legislature on the fees collected pursuant to Sections 25174.1, 25205.2, and 25205.5 and the surcharges collected pursuant to Section 25205.9. The reports shall be due on the 15th day of the second month following each quarter.

SEC. 7. Section 25205.6 of the Health and Safety Code is amended to read:

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of two digit SIC codes, as defined in subdivision (o) of Section 25501, as established by the United States Department of Commerce, that consists of corporations which use, generate, store, or conduct activities in this state related to hazardous materials, as defined in subdivision (j) of Section 25501, including, but not limited to, hazardous waste.

(b) Each corporation identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at one hundred dollars ($100) for those corporations with 50 or more employees but less than 100 employees, five hundred dollars ($500) for corporations with 100 or more, but less than 500 employees, and one thousand dollars ($1,000) for corporations with 500 employees or more.

(c) The fee imposed pursuant to this section shall be paid by each corporation which is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Hazardous Waste Control Account. The revenues shall be available, upon appropriation by the Legislature, to cover the costs of implementing this chapter.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the previous calendar year for which the fee is due.

SEC. 8. Section 25313.5 of the Health and Safety Code is amended to read:

25313.5. "Extra-large site" means a hazardous substance release site which the department estimates will cost at least five million dollars ($5,000,000) for completion of a remedial investigation and a feasibility study, or at least twenty million dollars ($20,000,000) for the full implementation of all removal and remedial actions, except operation and maintenance.

SEC. 9. Section 25317.5 of the Health and Safety Code is amended to read:

25317.5. "Large site" means a hazardous substance release site

which the department estimates will cost at least one million two hundred fifty thousand dollars ($1,250,000), but less than five million dollars ($5,000,000), for completion of a remedial investigation and a feasibility study, or at least five million dollars ($5,000,000), but less than twenty million dollars ($20,000,000), for the full implementation of all removal and remedial actions, except operation and maintenance.

SEC. 10. Section 25319 of the Health and Safety Code is amended to read:

25319. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

SEC. 11. Section 25330 of the Health and Safety Code is amended to read:

25330. There is in the General Fund a Hazardous Substance Account which shall be administered by the director. In addition to any other moneys appropriated by the Legislature to the account, the following amounts shall be deposited in the account:

(a) All moneys recovered by the state account pursuant to Section 25360.

(b) Any moneys recovered by the State Board of Control pursuant to Section 25380.

(c) Any fines or civil penalties collected pursuant to Section 25343.

(d) The fees collected pursuant to Article 4 (commencing with Section 25340).

(e) Any interest earned upon money deposited in the state account.

(f) Any moneys received from the federal government pursuant to the federal act.

(g) Any moneys received from responsible parties for remedial action or removal at a specific site.

(h) The fees collected pursuant to Section 25174.1.

SEC. 12. Article 4 (commencing with Section 25340) of Chapter 6.8 of Division 20 of the Health and Safety Code is repealed.

SEC. 13. Article 4 (commencing with Section 25340) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 4. Fees

25340. "Board," as used in this article, means the State Board of Equalization.

25341. The fees collected pursuant to this article shall be deposited in the state account.

25342. The Director of Finance shall schedule in the annual Budget Act the projects proposed in any fiscal year, which will incur

direct costs for removal and remedial actions at hazardous substance release sites.

25343. (a) The board shall assess a fee upon a potentially responsible party for the costs incurred by the department in connection with the oversight of any removal or remedial action taken by that party pursuant to Section 25355.5 or any action taken by that party pursuant to an order issued pursuant to subdivision (a) of Section 25358.3. The fee is in addition to the costs incurred for the removal or remediation which are not oversight costs, and shall be recovered pursuant to Section 25360. The fees shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the state account.

(b) A potentially responsible party shall pay the fee imposed pursuant to this section prior to the commencement of the action for which the oversight occurs. The amounts of the fee specified in this section are base rates for the 1989–90 fiscal year. Thereafter, the board shall adjust the fee annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index issued by the Department of Labor or a successor agency of the United States government.

(c) A potentially responsible party shall pay a fee of five thousand dollars ($5,000) to pay for the costs of those actions deemed necessary by the department to accurately estimate the size and complexity of a hazardous substance release site to establish the fee imposed pursuant to subdivisions (d) to (j), inclusive.

(d) A potentially responsible party shall pay a fee for a preliminary endangerment assessment of seven thousand five hundred dollars ($7,500).

(e) A potentially responsible party shall pay a fee for oversight of a removal action of fourteen thousand five hundred dollars ($14,500) for a small removal action, thirty-seven thousand dollars ($37,000) for a medium removal action, seventy-three thousand five hundred dollars ($73,500) for a large removal action, and one hundred forty-seven thousand dollars ($147,000) for an extra-large removal action.

(f) A potentially responsible party shall pay a fee for oversight of a remedial investigation and a feasibility study of twenty-one thousand five hundred dollars ($21,500) for a small site, forty-three thousand dollars ($43,000) for a medium site, eighty-five thousand five hundred dollars ($85,500) for a large site, and two hundred thousand dollars ($200,000) for an extra-large site.

(g) A potentially responsible party shall pay a fee for oversight of a remedial action plan of four thousand five hundred dollars ($4,500) for a small site, nine thousand dollars ($9,000) for a medium site, eighteen thousand dollars ($18,000) for a large site, and thirty-eight thousand dollars ($38,000) for an extra-large site.

(h) A potentially responsible party shall pay a fee for oversight of a remedial design of seven thousand five hundred dollars ($7,500) for

a small site, fourteen thousand five hundred dollars ($14,500) for a medium site, twenty-nine thousand dollars ($29,000) for a large site, and eighty thousand dollars ($80,000) for an extra-large site.

(i) A potentially responsible party shall pay a fee for the oversight of a final remedial action of ten thousand dollars ($10,000) for a small site, twenty thousand dollars ($20,000) for a medium site, forty thousand dollars ($40,000) for a large site, and one hundred six thousand dollars ($106,000) for an extra-large site.

(j) A potentially responsible party shall pay a fee per year for oversight and monitoring of ongoing operation and maintenance activities of six thousand dollars ($6,000) for a small operation and maintenance activity, twelve thousand dollars ($12,000) for a medium operation and maintenance activity, twenty-four thousand dollars ($24,000) for a large operation and maintenance activity, and thirty-four thousand dollars ($34,000) for an extra-large operation and maintenance activity.

(k) (1) Fees for any oversight activity being performed on July 1, 1989, or any subsequent date, shall be assessed pursuant to this section and Section 25344, even if the activity began prior to July 1, 1989. If the activity began prior to July 1, 1989, the fees shall be payable on or before November 29, 1989. This section shall not apply to activities for which work has been completed prior to July 1, 1989.

(2) If there is a conflict between this subdivision and Section 25344 and the provisions of any agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 25355.5 prior to September 29, 1989, the agreement shall prevail, unless the agreement is modified as allowed by its terms or by mutual consent of all parties.

(3) Any order or agreement entered into for removal or remedial action may be modified by consent of all parties to assess the fees listed in this section in place of any provisions for charges or cost recovery contained in the order of agreement.

(*l*) Notwithstanding this section, a potentially responsible party shall pay the board a fee equal to the actual costs of the department's costs of oversight, in advance of the oversight for removal or remedial activities which is done, pursuant to an agreement, if the site is not listed pursuant to Section 25356, except the potentially responsible party is not required to pay for the costs of any activities necessary and incidental to entering the agreement, which shall be reimbursed pursuant to the agreement.

(m) (1) The department may reclassify a site as to size, as warranted by new information supplied by the department, but this reclassification shall not result in a change in the amount of fees for oversight of any activity which has been completed or is underway.

(2) If a site may be classified as two sizes pursuant to Sections 25313.5, 25317.5, 25318, and 25326.6, it shall be classified as the larger of those sizes.

(n) Notwithstanding this section, the department may waive the fees imposed by this section for any hazardous substance release site

owned and operated by an agency of the federal government, if the department has entered into an agreement with that agency for the payment of fees in an amount different from the amounts specified in this section.

25344. (a) A potentially responsible party is liable for reimbursing the state account or the Hazardous Substance Cleanup Fund for all expenditures associated with the identification, characterization, and remediation of hazardous substance release sites, including interest and administrative costs, pursuant to Section 25360, for any of these activities which occur before July 1, 1989. The department shall prorate the fees charged by the department pursuant to Section 25343 for an activity or phase of activity initiated, but not completed, prior to July 1, 1989, pursuant to this section.

(b) The department shall divide the fee for an activity or phase of activity specified in Section 25343 by the number of months estimated by the department to be required to conduct the activity or phase of activity to establish a monthly fee quotient. The department may apply the monthly fee quotient in either of the following ways to establish the prorated fee:

(1) The department may subtract that portion of an activity or phase of activity completed prior to July 1, 1989, from the total number of months estimated by the department to be required to conduct the activity or phase of activity and then multiply the remainder by the monthly fee quotient to establish the prorated fee.

(2) The department may estimate the number of months required to complete an activity or phase of activity and multiply that figure by the monthly fee quotient to establish the prorated fee.

(c) For purposes of making the estimates as are necessary to prorate fees, the department may use the following time periods as guidelines to establish the time periods necessary to complete the various activities and phases of activity specified in Section 25343 for which fees are assessed:

(1) The time period required to estimate site size for fee assessment purposes is three months.

(2) The time period required to conduct preliminary endangerment assessments is three months.

(3) The time period required to conduct removal actions is four months for small actions, six months for medium actions, 12 months for large actions, and 24 months for extra-large actions.

(4) The time period required to conduct remedial investigations and feasibility studies is nine months for small sites, 17 months for medium sites, 33 months for large sites, and 60 months for extra-large sites.

(5) The time period required to prepare remedial action plans is three months for small sites, three months for medium sites, six months for large sites, and nine months for extra-large sites.

(6) The time period required to prepare remedial design is two months for small sites, three months for medium sites, six months for large sites, and 12 months for extra-large sites.

(7) The time period required to conduct final remedial actions is deemed to be four months for small sites, eight months for medium sites, 20 months for large sites, and 40 months for extra-large sites.

(8) Ongoing operation and maintenance activities are deemed to be conducted 12 months per year.

25345. The board shall enforce the provisions of this article and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this article.

SEC. 14. Section 25345.3 of the Health and Safety Code is amended to read:

25345.3. (a) Any person, or the person's contractor, which removes or remedies a release, by another person, of hazardous waste is not subject to the requirements of Sections 25342 and 25345 with respect to that removal or remedial action.

(b) Except as provided in subdivision (c), the person responsible for a release of hazardous waste, which has been removed or remedied by a state or local agency, or its contractor, shall submit to the board the information required by Section 25342 for the hazardous waste which was released and shall also pay the tax provided in Section 25345.

(c) (1) If the original release did not result from willful misconduct by the responsible person, any person who has assumed responsibility for conducting a removal or remedial action at a hazardous substance release site in compliance with the time schedule set forth in the remedial action plan issued pursuant to Section 25356.1, shall be subject to a rate as follows with respect to the fee provided for in Sections 25174.1 and 25174.6 and the tax provided for in Section 25345 for the disposal of hazardous waste generated in the course of the removal or remedial action:

(A) From October 1, 1990, to June 30, 1991, 45 percent of the amount that would otherwise be due in the absence of the exemption provided by this subdivision.

(B) From July 1, 1991, to June 30, 1992, 55 percent of the amount that would be due in the absence of the exemption provided by this subdivision.

(2) For purposes of paragraph (1), a responsible person shall not be deemed out of compliance with the time schedule set forth in the remedial action plan unless a final determination of noncompliance with that time schedule has been made in accordance with paragraph (2) of subdivision (a) of Section 25355.5.

(3) The term "remedial action plan" as used in this subdivision does not include an imminent and substantial endangerment order issued as an exception to the remedial action plan requirements pursuant to paragraph (1) of subdivision (g) of Section 25356.1.

(d) This section shall remain in effect 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. 15. Section 25360 of the Health and Safety Code is amended to read:

25360. (a) Any costs incurred and payable from the state account or the Hazardous Substance Cleanup Fund shall be recovered by the Attorney General, upon the request of the department, from the liable person or persons. The amount of any costs which may be recovered pursuant to this section, for a remedial or removal action paid from the Hazardous Substance Cleanup Fund, shall include the amount paid from that fund and interest on that amount calculated at a rate equal to the interest rate of the bonds sold pursuant to Article 7.5 (commencing with Section 25385).

(b) Except as provided in subdivision (c), in addition to the costs specified in subdivision (a), the person or persons are liable to the department for administrative costs in an amount equal to 10 percent of the reasonable cost actually incurred, or five hundred dollars ($500), whichever is greater.

(c) The total liability of a person who is liable for costs incurred and payable from the state account for a removal or remedial action taken pursuant to an order issued or agreement entered into pursuant to paragraph (1) of subdivision (a) of Section 25355.5, or an order issued pursuant to subdivision (a) of Section 25358.3, or for other costs incurred and payable from the state account or the Hazardous Substance Cleanup Fund, shall be reduced by the amount of fees paid pursuant to Section 25343.

(d) The amount of cost determined pursuant to this section shall be recoverable in a civil action. Nothing in this section deprives a party of any defense he or she may have.

(e) Moneys recovered by the Attorney General pursuant to this section shall be deposited in the state account, except that, if the costs incurred were paid from the Hazardous Substance Cleanup Fund, the Attorney General shall deposit the amounts recovered into the Hazardous Substance Clearing Account. Moneys deposited in the Hazardous Substance Clearing Account pursuant to this section are available to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385).

SEC. 16. Section 25395 of the Health and Safety Code is amended to read:

25395. (a) Except as provided in subdivisions (b), (c), and (d), this chapter shall remain in effect only until July 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1996, deletes or extends that date.

(b) On July 1, 1996, the Department of Finance shall submit a report to the Secretary of State which states whether the principal of, and interest on, the bonds sold pursuant to Article 7.5 (commencing with Section 25385) have been paid and the General Fund has been reimbursed for any and all amounts that were expended therefrom to pay the principal of, and interest on, those bonds. If the report states that the bonds have not been paid and the General Fund has not been reimbursed, then, notwithstanding subdivision (a), Article 1 (commencing with Section 25300), Article 2 (commencing with Section 25310), Article 3 (commencing with

Section 25330), Article 4 (commencing with Section 25340), Article 6 (commencing with Section 25360), Article 7.5 (commencing with Section 25385), and this article, shall not be repealed and shall remain in effect until the date specified in subdivision (c).

(c) If the articles specified in subdivision (b) remain in effect after July 1, 1996, pursuant to subdivision (b), on the date when the principal of, and interest on, the bonds sold pursuant to Article 7.5 (commencing with Section 25385) have been paid and the General Fund has been reimbursed for any and all amounts that were expended therefrom to pay the principal of, and interest on, those bonds, the Department of Finance shall submit a report to the Secretary of State containing that information. The articles specified in subdivision (b) shall be repealed on the date when that report is submitted.

(d) Section 25364.6 shall not be repealed, except as provided in subdivision (j) of that section.

SEC. 17. Section 43002.3 of the Revenue and Taxation Code is amended to read:

43002.3. For purposes of the collection of the fees specified in subdivision (a) of Section 25174 and the fee imposed pursuant to Section 25174.1 of the Health and Safety Code, a determination by the State Department of Health Services that a waste is nonhazardous shall be effective only for wastes disposed of, or submitted for disposal, commencing with the month during which the State Department of Health Services receives a completed application for that determination.

SEC. 18. Section 43006 of the Revenue and Taxation Code is amended to read:

43006. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

SEC. 19. Section 43012 of the Revenue and Taxation Code is amended to read:

43012. For purposes of this part, "taxpayer" means any person liable for the payment of a fee or a tax specified in subdivision (a) of Section 25174 of the Health and Safety Code, or imposed by Section 25174.1 of the Health and Safety Code.

SEC. 20. Section 43052 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 43101 of the Revenue and Taxation Code is amended to read:

43101. Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25174 of the Health and Safety Code or imposed pursuant to Section 25174.1 of the Health and Safety Code shall

register with the board on forms provided by the board.

SEC. 22. Section 43101 of the Revenue and Taxation Code is amended to read:

43101. Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25174 of the Health and Safety Code or imposed pursuant to Section 25174.1 of the Health and Safety Code or the surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code shall register with the board on forms provided by the board.

SEC. 23. Section 43151 of the Revenue and Taxation Code is amended to read:

43151. The fee imposed pursuant to Section 25174.1 of the Health and Safety Code which is a tax collected and administered under Section 43051 is due and payable to the board quarterly on or before the last day of the calendar month following the quarterly period for which the tax is due. Each taxpayer, on or before the last day of the month following the quarterly period for which the tax is due, shall make out a tax return for the preceding quarterly period, in the form as prescribed by the board, showing the total amount of hazardous waste subject to the tax, the amount of the tax for the period covered by the return, and any other information that the board deems necessary. The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before the last day of the month following the quarterly period for which the tax is due.

With the approval of the board, a taxpayer who has more than one facility subject to the taxes collected and administered under this chapter, may file a combined tax return covering operations at more than one, or all, of those facilities.

SEC. 24. Section 43152 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 43552 of the Revenue and Taxation Code is amended to read:

43552. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Sections 43051 and 43054 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Hazardous Substance Account.

SEC. 26. Section 6.5 of this bill incorporates amendments to Section 25178.1 of the Health and Safety Code proposed by both this bill and AB 2794. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 25178.1 of the Health and Safety Code, and (3) this bill is enacted after AB 2794, in which case Section 25178.1 of the Health and Safety Code, as amended by Section 6 of this bill, shall remain operative only until

the operative date of AB 2794, at which time Section 6.5 of this bill shall become operative.

SEC. 27. Section 22 of this bill incorporates amendments to Section 43101 of the Revenue and Taxation Code proposed by both this bill and AB 2794. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 43101 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2794, in which case Section 43101 of the Revenue and Taxation Code, as amended by Section 21 of this bill, shall remain operative only until the operative date of AB 2794, at which time Section 22 of this bill shall become operative.

SEC. 28. 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. 29. Sections 1 to 13, inclusive, and Sections 15 to 27, inclusive, of this act shall become operative January 1, 1991.

SEC. 30. 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 cleanup of hazardous waste sites, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1269

An act to amend Sections 113, 27551, and 27561 of, to add Chapter 7.9 (commencing with Section 25884) to, and to repeal Chapter 7.9 (commencing with Section 25885) of, Division 20 of, the Health and Safety Code, relating to health.

[Approved by Governor September 23, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 113 of the Health and Safety Code is amended to read:

113. (a) The fees or charges for the issuance or renewal of any permit, license or registration pursuant to Sections 403, 436.53, 527,

1017, 1616, 1676, 1677, 2202, 2805, 4083, 11887, 23013, 25628, 25694, 25696, 25697, 25812.8, 25816, 25817, 25889, 26506.2, 26593.2, 26593.4, 26688, 27010, 27011, 28126, 28410, 28411, and 28702 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 1.5. Chapter 7.9 (commencing with Section 25885) of Division 20 of the Health and Safety Code is repealed.

SEC. 2. Chapter 7.9 (commencing with Section 25884) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 7.9. CONTROL OF LEAD RELEASE FROM TABLEWARE

25884. The Legislature finds and declares all of the following:

(a) The program maintained by the United States Food and Drug Administration to regulate the amount of lead and cadmium released from ceramic, metal, and other dishware and tableware is inadequate to protect Californians from the importation and sale of unsafe tableware in this state

(b) Recent inspection and sampling conducted by local and state health departments in California has demonstrated that significant amounts of unsafe tableware are in fact being imported and sold in California.

(c) The standards established by the federal government for acceptable lead and cadmium release are likely inadequate to fully protect public health and may be inconsistent with requirements which already exist in California law governing exposure to lead and cadmium.

(d) It is the intent of the Legislature that the State Department of Health Services, first, establish its own program to protect the public from unsafe tableware and, second, develop standards for lead and cadmium release from tableware that are consistent with existing state law.

Article 1. Definitions

25885. For purposes of this chapter the following definitions shall apply:

(a) "Director" means the Director of Health Services.

(b) "Department" means the State Department of Health Services.

(c) "Distributor" means any person who brings tableware into California from another state for sale.

(d) "Importer" means any person who brings tableware into California from another country for sale.

(e) "Manufacturer" means any person who makes tableware sold in California.

(f) "Small business" means any manufacturer, importer, or distributor whose gross annual revenue for the sale of tableware is thirty thousand dollars ($30,000) or less

(g) "Tableware" means any glazed ceramic, enamel metalware, or pewter article, container, or utensil which may be used in the preparation, serving, or storage of food or drink.

Article 2. Standards

25886. It is unlawful to manufacture, process, import, sell, deliver, hold for sale, supply, or offer for sale in this state any tableware which releases a level of lead or cadmium in violation of the standards contained in the Compliance Policy Guide 7117.07 as described in 54 Federal Register 23485 or any subsequent, more stringent standards adopted by the United States Food and Drug Administration, as determined by the director.

25886.5. On or before January 1, 1993, the department shall evaluate the standards specified in Section 25886 to determine whether they are adequate to protect the public health, including, but not limited to, the health of children and other sensitive groups of the population, and shall report the results of this evaluation to the Legislature The evaluation and report shall specifically include recommendations regarding standards governing the release of lead and cadmium from tableware which would be necessary to adequately protect the public health and shall include comparisons with other public health standards governing exposure to lead and cadmium. The report shall also identify any additional studies necessary to adequately evaluate the public health impacts of exposures to lead and cadmium.

25887. (a) Each piece of tableware sold, or offered for sale, in this state shall be permanently and indelibly marked with the name of the manufacturer or importer responsible for the sale of the tableware in California, except that pieces too small to accommodate the name of the manufacturer or importer may instead be permanently marked with a registered trademark which is on file with the department.

(b) For the purposes of this section, permanently and indelibly marked means fired or manufactured into the glazed tableware.

(c) This section shall not apply to any tableware that is manufactured without lead or cadmium as an intentionally added ingredient or as an unintentional contaminant.

Article 3. Enforcement

25888. The department is responsible for the administration and enforcement of this chapter. The department shall annually report to the Legislature concerning the number and findings of inspections performed and samples taken to determine compliance with this chapter.

25889. (a) For fiscal years 1991–92 and 1992–93, the department shall levy a fee of five hundred dollars ($500) for each manufacturer, importer, and distributor of tableware sold in this state to be used for the implementation of this chapter, except that the department shall levy a fee of one hundred fifty dollars ($150) for small businesses. A penalty of 10 percent per month shall be added to any fee which is not paid when due. The fee shall not exceed the costs of administering and enforcing this chapter for the 1991–92 and 1992–93 fiscal years.

No later than July 1993, the department shall establish and implement a fee schedule which assesses an annual fee upon manufacturers, importers, and distributors of tableware sold in California. The fees shall be based on the reasonable anticipated costs which will be incurred by the department, and by local health officers if an agreement is executed pursuant to Section 25890, to implement and enforce this chapter. In calculating the necessary fees, the department shall include any civil penalties generated pursuant to Section 25893. Commencing in fiscal year 1993–94, the fee established pursuant to this subdivision shall be adjusted pursuant to Section 113 and shall further be adjusted annually by reducing the fee by an amount equal to the total amount of civil penalties collected pursuant to Section 25893 during the previous calendar year, divided by the total number of manufacturers, importers, and distributors having paid fees during the previous calendar year. The fee collected pursuant to subdivision (a) shall terminate upon implementation of the fee schedule developed pursuant to this subdivision. The fee schedule shall provide for the recovery of all costs of implementing this chapter, including the cost of establishing the fee schedule as prescribed in this section. In the event that the department's reasonable costs in any one fiscal year exceed the available fees for that year, the department shall, as necessary, delay any activities in administering this chapter which will incur costs exceeding available fees until the following year. All moneys collected as fees pursuant to this section shall be expended in carrying out this chapter.

25890. The department and a health officer, as defined in Section

26580, may enter into an agreement designating the local health department of a city, county, city and county, or local health district as the department's authorized agent for the purposes of enforcing this chapter. If an agreement is executed pursuant to this section, the department shall make fee revenues available to the health officer for performing duties relating to enforcing this chapter.

25891. (a) For the purposes of enforcing this chapter, any authorized agent of the department may, upon presenting credentials showing that he or she is an authorized agent of the department and at a reasonable time, do any of the following:

(1) Enter any factory, warehouse, or establishment in which any tableware is manufactured, held, distributed, used, or sold.

(2) Enter any vehicle which is being used to transport or hold tableware.

(3) Enter any place where any tableware is suspected of being held or sold in violation of this chapter.

(4) Inspect any factory, warehouse, establishment, vehicle, or place in which any tableware is manufactured, held, transported, distributed, used, or sold, and all equipment, raw materials, finished and unfinished materials, containers, and tableware therein. The inspection shall include any record, file, paper, process, control, and facility which has a bearing on whether the tableware complies with this chapter.

(5) Secure any sample or specimen of any tableware or of any release of lead or cadmium from tableware. If the agent obtains any samples prior to leaving the premises, he or she shall leave a receipt describing any sample obtained. The department shall secure only the quantity of tableware which is reasonably necessary to conduct the tests to determine the release of lead or cadmium as determined appropriate by the department.

(6) Have access to all records of carriers in commerce relating to the movement in commerce of any tableware, or the holding for sale of the tableware, and the quantity, shipper, and consignee.

(b) It is unlawful for any person to refuse to permit entry or inspection, the taking of samples or other evidence, including photographs, or access to copying of any record as authorized by this chapter, or to conceal the samples or evidence, or withhold evidence concerning them.

25892. The department may publish or publicly distribute any information regarding tableware, including results of tests and investigations, after assuring the accuracy of those tests and investigations, as the department considers necessary for the protection of public health and safety of the consumer or for the protection of the consumer from fraud.

Article 4. Penalties and Remedies

25893. The department may impose a civil penalty payable to the department upon any person who violates any provision of this

chapter or any regulation adopted pursuant to this chapter in the amount of not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000). If the violation is committed after a previous imposition of a penalty under this section which has become final, or if the violation is committed with intent to mislead or defraud, or if the violation concerns tableware primarily used by children or marketed for children, the person shall be subject to imprisonment for not more than one year in the county jail or imprisonment in state prison, or a fine of not more than ten thousand dollars ($10,000), or both the imprisonment and fine.

25894. (a) Whenever an authorized agent of the department finds, or has reason to believe, that any tableware has the potential to release amounts of lead or cadmium in violation of this chapter, he or she shall affix to the tableware a detention tag, embargo tag, or other similar marking, as determined appropriate by the authorized agent. The tag or other marking shall give notice that the tableware is suspected of releasing amounts of lead or cadmium in violation of this chapter and that no person shall remove or dispose of the tableware by sale or otherwise until permission for removal or disposal is given by an authorized agent of the department or the court.

(b) For the purposes of this section, an authorized agent has reason to believe that tableware has the potential to release amounts of lead or cadmium in violation of this chapter when, but not limited to instances when, the tableware tests positive for lead or cadmium release using the field test described in the document published by the United States Food and Drug Administration entitled Analytical Letters Vol. 21, 1988, pages 2145 to 2154, inclusive, or any other test for lead release subsequently approved for field use by the United States Food and Drug Administration and determined by the department to be at least as effective a test for lead or cadmium release as the test described in this subdivision.

(c) If a field test conducted pursuant to subdivision (b) tests positive for lead release, the department shall use the Association of Official Analytical Chemists/American Society for Testing and Material 24-hour test method, or any other test subsequently approved by the federal Food and Drug Administration determined by the department to be at least as effective a test for lead or cadmium release as the test described in this subdivision. The department shall conduct or obtain those tests within a reasonable time after embargoing affected tableware, and shall release any tableware found not to violate the standards of this chapter within a reasonable time after the laboratory test has been completed. For any food establishment, as defined in Section 27520, the department shall conduct or obtain those tests within a reasonable time, not to exceed 10 days, after embargoing affected tableware, and shall release any tableware found not to violate the standards of this chapter within 96 hours after the laboratory test has been conducted.

(d) If an item of tableware is found to violate this chapter, the

manufacturer, importer, retailer, and distributor shall, at the option of the holder of the tableware, either provide the holder of the tableware with comparable replacement tableware acceptable to the holder or be liable to the holder of the tableware for the cost of purchasing comparable replacement tableware.

(e) No person shall remove, sell, or dispose of detained or embargoed tableware without permission of an authorized agent of the department or a court.

25894.5. Any tableware which violates this chapter shall also be governed by the procedures set forth in Sections 26833, 26834, 26835, 26837, 26850, 26850.5, and 26851. Except for use of the procedures set forth in those sections, nothing in this section shall be interpreted as making this chapter part of Division 21.

25894.7. This chapter shall become operative on July 1, 1991.

SEC. 3. Section 27551 of the Health and Safety Code is amended to read:

27551. (a) A food facility shall not be open for business without a valid permit.

(b) A permit shall be issued by the local enforcement agency when investigation has determined that the proposed facility and its method of operation will conform to the requirements of this chapter. A permit, once issued, is nontransferable. A permit shall be valid only for the person, location, type of food sales, or distribution activity approved and, unless suspended or revoked for cause, for the time period indicated.

(c) Any fee for the permit and related services shall be determined by the local governing body. Fees shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting and impounding any utensil suspected of releasing lead or cadmium in violation of Section 25886 as authorized by Section 27561. All moneys collected as fees shall be expended in carrying out the provisions of this chapter.

(d) A permit shall be posted in a conspicuous place in the food facility or in the office of a vending machine business.

SEC. 4. Section 27561 of the Health and Safety Code is amended to read:

27561. (a) Based upon inspection findings or other evidence, an enforcement officer may do any of the following:

(1) Impound any food which is found to be, or suspected of being, contaminated or adulterated.

(2) Impound equipment or utensils which are found to be unsanitary or in such disrepair that food, equipment, or utensils may become contaminated or adulterated, and inspect, impound, or inspect and impound any utensil which is suspected of releasing lead or cadmium in violation of Section 25886. The enforcement officer may attach a tag to such food, equipment or utensils which shall be removed only by the enforcement officer following verification that the condition has been corrected.

(b) No food, equipment, or utensils impounded pursuant to

subdivision (a) shall be used unless the impoundment has been released.

(c) Within 30 days the enforcement agency that has impounded the food, equipment, or utensils pursuant to subdivision (a) shall commence proceedings to release the impounded materials or to seek administrative or legal remedy for its disposition.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 1270

An act to amend Section 50781 of the Health and Safety Code, to amend Sections 987.65 and 987.85 of the Military and Veterans Code, and to amend Section 23701v of the Revenue and Taxation Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 23, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 50781 of the Health and Safety Code is amended to read:

50781. Unless the context otherwise requires, the following definitions given in this section shall control construction of this chapter.

(a) "Affordable" means that, where feasible, low-income residents should not pay more than 30 percent of their monthly income for housing costs.

(b) "Conversion costs" includes the cost of acquiring the mobilehome park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a governmental agency or lender for the project.

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

(d) "Fund" means the Mobilehome Park Purchase Fund created pursuant to Section 50782.

(e) "Housing costs" means the total cost of owning, occupying, and maintaining a mobilehome and a lot or space in a mobilehome

park. The department's regulations shall specify the factors included in these costs and may, for the purposes of calculating affordability, establish reasonable allowances.

(f) "Individual interest in a mobilehome park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobilehome park for a period of not less than either 15 years or the life of the holder. Individual interests in a mobilehome park include, but are not limited to, the following:

(1) Ownership of a lot or space in a mobilehome park or subdivision.

(2) A membership or shares in a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a limited equity housing cooperative, as defined in Section 33007.5 of the Health and Safety Code.

(3) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobilehome park.

(g) "Low-income resident" means an individual or household who is a lower income household, as defined in Section 50079.5. However, personal assets shall not be considered in the calculation of income, except to the extent that they actually generate income.

(h) "Low-income spaces" means those spaces in a mobilehome park operated by a resident organization which are occupied by low-income residents.

(i) "Mobilehome park" means a mobilehome park, as defined in Section 18214, or a manufactured home subdivision created by the conversion to resident ownership of a mobilehome park, as defined in Section 18214, including a senior park.

(j) "Program" means the Mobilehome Park Resident Ownership Program.

(k) "Resident organization" means a group of mobilehome park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobilehome park in which they reside and converting the mobilehome park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobilehome park. The two-thirds of households in the resident organization at the time of funding the park need not be the same households that were residing in the park when the application for assistance was submitted to the department. A household's membership in the resident organization when the application was submitted to the department shall not be a requirement for that household to receive a loan or assistance under this chapter.

(k) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobilehome park which entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park, or both.

SEC. 2. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, shall not exceed one hundred twenty-five thousand dollars ($125,000).

(b) The purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code shall not exceed ninety thousand dollars ($90,000).

(c) The purchase price of a mobilehome which is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall not exceed seventy thousand dollars ($70,000).

(d) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department is required, under Section 987.69, to add to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(e) The purchase price of a farm to the department shall not exceed two hundred thousand dollars ($200,000). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount which the department is required, under Section 987.69, to add to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

(f) The assistance provided by the department to a veteran pursuant to subdivision (e) of Section 987.85 shall not exceed seventy thousand dollars ($70,000).

SEC. 2.5. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, shall not exceed one hundred twenty-five thousand dollars ($125,000).

(b) The purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code shall not exceed one hundred twenty-five thousand dollars ($125,000).

(c) The purchase price of a mobilehome which is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall not exceed seventy thousand dollars ($70,000).

(d) A veteran purchasing the home may advance, subject to

Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department is required, under Section 987.69, to add to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(e) The purchase price of a farm to the department shall not exceed two hundred thousand dollars ($200,000). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount which the department is required, under Section 987.69, to add to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

(f) The assistance provided by the department to a veteran pursuant to subdivision (e) of Section 987.85 shall not exceed seventy thousand dollars ($70,000).

SEC. 3. Section 987.85 of the Military and Veterans Code is amended to read:

987.85. The department shall not acquire a home in which the veteran has an interest of record except in the following instances:

(a) Where the application is for aid for the construction of a home upon real property owned by the applicant and the improvements to be constructed thereon have not reached completion as evidenced by the issuance of a certificate of occupancy.

(b) Where the veteran had no interest of record in the property at the time of filing his or her application and thereafter secured interim financing pending the processing and approval of the application by the department.

(c) Where the application is for the purchase of a mobilehome to be situated upon real property, or an undivided interest therein, owned by the applicant.

(d) Where the applicant is an Indian veteran and the application is for the construction of a dwelling house or other improvements on, or for the purchase of a mobilehome to be sited on, trust land in which the Indian veteran has a beneficial interest or owns an interest of record.

(e) Where the application is for assistance to enable the veteran to purchase his or her space, or share in a mobilehome park, which is converted from a rental park to a nonprofit corporate resident-owned park or subdivision, cooperative, or condominium for mobilehomes, in which the veteran resides in his or her mobilehome. A veteran applying for assistance under this subdivision shall not be required to have his or her mobilehome reinstalled on a permanent foundation system as a condition of receiving the proceeds of the loan to purchase his or her space or share of the park. This subdivision shall be implemented by the department only to the

extent that expenditures for the kind of financial assistance to veterans enumerated herein conform to the requirements of federal tax law with regard to the tax-exempt status of funding instruments utilized to provide the assistance.

SEC. 4. 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 to convert it to condominium, stock cooperative, or other resident ownership interests.

(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. 5. Section 2.5 of this bill incorporates amendments to Section 987.65 of the Military and Veterans Code proposed by both this bill and AB 3114. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 987.65 of the Military and Veterans Code, and (3) this bill is enacted after AB 3114, in which case Section 2 of this bill shall not become operative.

CHAPTER 1271

An act to amend Section 977.2 of the Penal Code, relating to criminal proceedings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 977.2 of the Penal Code, as amended by Chapter 427 of the Statutes of 1990, is amended to read:

977.2. (a) Notwithstanding Section 977, the board of supervisors of any California county may establish a pilot project. The board shall establish the project with the approval of the presiding judge, the district attorney, and the public defender. The project shall be developed in close consultation between the presiding judge, the district attorney, the public defender, and the sheriff, and shall not exceed four years in duration.

(b) The project shall permit the initial arraignment in municipal or superior court, in all counties, of defendants held in any state, county, or local penal facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audio video communication between the defendant and the

courtroom in lieu of the physical presence of the defendant in the courtroom. The defendant may be accompanied by his or her attorney, and may enter a plea, during the arraignment. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests.

(c) Each county conducting a pilot project pursuant to this section shall submit reports to the Legislative Analyst no later than September 30 of each year. The report shall include the following data:

(1) The number of add-on pleas, and the number of cases disposed of, through the use of audio video arraignment.

(2) The number of defendants who refuse to sign the waiver of personal appearance and are transported to the courtroom to be physically present for the arraignment proceedings.

(3) The number and impact of add-on defendants arraigned.

(4) Initial costs and maintenance costs of the project.

(5) Cost savings, including transportation costs, over the previous method of arraignment.

(6) The impact of audio video arraignment on all participants in the procedures used under this section, including, but not limited to, security personnel, attorneys, judges, defendants, and court employees.

(7) Any other benefits or problems incurred.

(8) Any future plans for the project.

Other specific data for inclusion in the report may be specified by the Judicial Council.

(d) The Legislative Analyst shall review and summarize all data submitted by the counties and shall submit a final report on the fiscal effects of this section along with any recommendations to the Legislature no later than December 1, 1991. The Judicial Council shall submit a final report on the nonfiscal, policy consequences of this section along with any recommendations to the Legislature no later than December 1, 1991.

(e) Notwithstanding any other provision of this section, a judge may order a defendant's personal appearance in court for arraignment, and shall not pursuant to this section accept a plea of guilty or no contest from a defendant charged with a felony who is not physically in the courtroom. A judge may, pursuant to this section, accept a plea of guilty or no contest from a defendant charged with a misdemeanor who is not physically in the courtroom.

(f) 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. 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 revise current law as soon as possible regarding the acceptance of guilty pleas via audio video communication which is

used to enhance public safety and security in the courts, it is necessary that this act take effect immediately.

CHAPTER 1272

An act to amend Section 471 of the Business and Professions Code, and to repeal Section 2 of Chapter 1313 of the Statutes of 1986, relating to litigation.

[Approved by Governor September 23, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 471 of the Business and Professions Code is amended to read:

471. (a) The advisory council shall adopt rules and regulations to effectuate the purposes of this chapter, including, but not limited to, guidelines to be used by the programs for the recruitment and training of persons conducting dispute resolution, and provisions for periodic monitoring and evaluation of the programs funded pursuant to this chapter. The advisory council shall establish guidelines to evaluate the performance of participating programs, which shall include analysis of court caseload reduction, cost savings to the state, the efficacy of the programs, and the feasibility of operation of a statewide program of grants at the time the state assumes the responsibility for the funding of trial courts.

(b) The advisory council shall adopt temporary guidelines within six months of its initial meeting. The adoption of these temporary guidelines shall not be subject to the procedures specified in Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

Upon the adoption of the temporary guidelines, counties may award grants pursuant to this chapter. Programs funded pursuant to this chapter shall comply with the temporary guidelines, the requirements of this chapter and, when adopted, the formal rules and regulations.

(c) Formal rules and regulations implementing this chapter shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and, upon adoption, shall supersede the temporary guidelines adopted pursuant to subdivision (b).

(d) On and after January 1, 1989, or such earlier date as the advisory council completes its duties pursuant to this chapter, the Division of Consumer Services of the Department of Consumer Affairs shall periodically review the effectiveness of the rules and regulations adopted pursuant to this chapter and adopt changes thereto as necessary. It also shall monitor and evaluate the programs

funded pursuant to this chapter as to their compliance with those rules and regulations.

(e) The Director of Consumer Affairs shall administer and enforce this chapter and the rules and regulations adopted pursuant to this chapter, and in so doing may exercise any power conferred under Chapter 4 (commencing with Section 300).

SEC. 2. Section 2 of Chapter 1313 of the Statutes of 1986 is repealed.

CHAPTER 1273

An act to amend Sections 14529.5, 14551, and 14571.8 of the Public Resources Code, relating to beverage containers.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 14529.5 of the Public Resources Code is amended to read:

14529.5. Any action to increase recycling taken by the department, or by any person or entity, affecting scrap values, the quantities of materials being recycled, or the method of invoicing the sale of beverages pursuant to this division is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) and the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

SEC. 2. 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.

(14) The volumes of materials collected from certified recycling centers, by city or county, as requested by the city or county, if the reporting is consistent with the procedures established pursuant to Section 14554 to protect proprietary information.

(15) The amount of convenience incentive payments paid to certified recycling centers in each county.

(16) A listing of any convenience incentive payment amounts each convenience zone has received.

(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. 3. Section 14571.8 of the Public Resources Code, as amended by Chapter 165 of the Statutes of 1990, 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 refund 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). The report shall include the amount of volumes of materials collected and reported by curbside programs, by city, pursuant to the surveys conducted pursuant to Section 14551.5, if the reporting is consistent with the procedures established pursuant to Section 14554 to protect

proprietary information.

CHAPTER 1274

An act to amend Sections 14518.5, 14526, 14541, 14571, 14571.7, 14571.8, 14575, 14580, 14581, 14585, and 14591 of, and to add Sections 14509.3, 14581.5, 14586.6, and 14592 to, the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. The Legislature finds and declares that:

(a) Appreciable quantities of glass, after being provided to processors and recyclers with the intent that the glass be recycled, are ultimately being landfilled, contrary to the intent of the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500) of the Public Resources Code).

(b) It is in the best interest of the health and safety of the people of the state that glass be recycled rather than disposed of in the limited amount of space available for landfill.

(c) In order to enhance the availability and efficiency of recycling opportunities, it is in the best interest of the health and safety of the people of the state to make alternative markets for recycled glass economically feasible.

SEC. 2. Section 14509.3 is added to the Public Resources Code, to read:

14509.3. "Cullet" means broken scrap glass that is derived from post-filled food, drink, or beverage container glass produced or imported for sale in the state.

SEC. 3. Section 14518.5 of the Public Resources Code is amended to read:

14518.5. "Processing fee" means an amount paid proportionately to processors, dropoff or collection programs, curbside programs, nonprofit dropoff programs, and recycling centers by the department pursuant to subdivision (c) of Section 14573 and subdivision (c) of Section 14573.5 when the department determines that the scrap value being offered by container manufacturers, beverage manufacturers, or willing purchasers for a particular container material is insufficient to insure the economic recovery of the container type at the minimum number of recycling centers or locations required pursuant to Section 14571. The processing fee shall be determined by the department pursuant to Section 14575.

SEC. 4. Section 14526 of the Public Resources Code is amended

to read:

14526. "Scrap value" means the price paid for container material types subject to this division, after shipping and handling costs are deducted.

SEC. 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, sign posting, 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. 6. 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 a.m. to 5 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) In addition to the sign specified in subdivision (f), 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) 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 accepting all types of empty beverage containers at one physical recycling location within the recycling location.

(e) Whenever a recycling center which is a reverse vending machine is not open for business during the 30 hours of operation required and posted pursuant to this section and Section 14570, the dealer which is hosting the reverse vending machine at its place of business shall redeem all empty beverage container types at all open cash registers or one designated location in the store, as specified on the sign required pursuant to subdivision (f).

(f) In addition to the sign specified in paragraph (2) of subdivision (b), each reverse vending machine shall be posted with a clear and conspicuous sign on or near the reverse vending machine which states that beverage containers may be redeemed by the host dealer if the machine is nonoperational at any time during the required 30 hours of operation, pursuant to subdivision (e). The department shall determine the size and location of the sign and the message required to be printed on the sign.

SEC. 7. Section 14571.7 of the Public Resources Code is amended to read:

14571.7. (a) Except as provided in subdivision (b), 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, on or before August 1, 1990, 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. 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.

(b) 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, on or after August 1, 1990, or the convenience zone is to be established after October 1, 1990, the department shall determine, pursuant to Section 14571.8, if the convenience zone is eligible for an exemption. If the convenience zone meets all of the requirements for an exemption pursuant to 14571.8, the department shall grant one exemption. If the department determines that a convenience zone is not eligible for an exemption pursuant to subdivision (a) and Section 14571.8, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 90 days. 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. 8. Section 14571.8 of the Public Resources Code, as amended by Chapter 165 of the Statutes of 1990, is amended to read:

14571.8. (a) 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 average daily volume of beverage containers redeemed by all facilities in the convenience zone is below the statewide average of beverage containers redeemed in convenience zones receiving a convenience incentive payment. The condition specified in this paragraph does not apply to an exemption made pursuant to subdivision (c) or (d) or to a proposed convenience zone which is being considered for an exemption prior to its establishment.

(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 in close proximity to the dealer which is located in the convenience zone proposed to be exempted, as determined by the department. This paragraph does not apply to an exemption made pursuant to subdivision (c).

(c) 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 all of the following conditions are met:

(1) The conditions established under paragraph (1) and paragraphs (3) to (6), inclusive, of subdivision (b) are met.

(2) If the exemption is for a curbside recycling program, the program recycles all types of beverage containers from households at least once every two weeks or twice monthly and a city, county, or other public agency acknowledges the program in writing or operates the program directly or through a contractual arrangement.

(d) Upon the request of a dealer or a recycling center, the director may grant an exemption from the requirements of Section

14571 if all of the following conditions are met:

(1) 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. However, any lease executed after January 1, 1987, shall meet the requirements specified in subdivision (a).

(2) The local zoning or leasehold restrictions in paragraph (1) are beyond the control of the department and the dealer.

(3) The conditions under paragraph (1) and paragraphs (3) to (6), inclusive, of subdivision (b) are met.

(e) On and after January 1, 1990, 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. 9. Section 14575 of the Public Resources Code is amended to read:

14575. (a) Except as provided in subdivision (b), 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, processors, or willing purchasers, for each container sold by the beverage manufacturer, and the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding those recycling centers receiving a convenience incentive payment, and certified processors which did not receive convenience incentive payments in the year in which the processing fee is calculated or recalculated, 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 (c).

(2) A reasonable financial return for recycling centers and processors, calculated pursuant to subdivision (c).

(b) Notwithstanding subdivision (a), any processing fee established by the department on or before January 1, 1991, shall not use a recycling cost, as specified in paragraphs (1) and (2) of subdivision (a), which is greater than 10 percent higher than the recycling cost calculated by the department on or before December 31, 1987.

(c) On or before January 1, 1991, or on the earliest practicable date thereafter, and on or before January 1 annually therafter, the department shall calculate weighted statewide average values for

the amounts specified in paragraphs (1) and (2) of subdivision (a) for each type of container material sold and a new processing fee, which shall be effective on that same date.

(d) A processing fee established pursuant to this section shall be based upon all of the following:

(1) The average scrap values paid by willing purchasers during the 1990 calendar year for the initial calculation and the average scrap values paid by willing purchasers during the calendar year directly preceding the year in which the processing fee is calculated for any subsequent calculation.

(2) The latest available data indicating the volumes of beverage containers collected by certified processors and recycling centers.

(3) The actual recycling costs for certified recycling centers and processors, as determined pursuant to paragraph (1) of subdivision (a) for the 1989 calendar year for the initial calculation, and for the second calendar year preceding the year in which the processing fee is calculated for any subsequent calculation.

(e) Every six months, or more frequently as determined to be necessary by the department, the department may adjust a processing fee established pursuant to this section if both of the following occur:

(1) The department determines that the average statewide scrap values paid by willing purchasers are less than the average scrap values used as the basis for the processing fee calculation.

(2) The department determines that adjusting the processing fee is necessary to further the objectives of this division.

(f) The calculations of the statewide weighted average values and processing fee made pursuant to subdivision (c) 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. Except for the first calculation of a processing fee made pursuant to this section, 60 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.

(g) (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).

(h) When assessing processing fees pursuant to subdivision (c),

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.

(i) 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. 10. Section 14580 of the Public Resources Code is amended to read:

14580. (a) Except as provided in subdivision (d), 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 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 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.

(d) The department shall deposit all amounts paid as processing fees pursuant to Section 14575 for glass beverage containers into the Glass Processing Fee Account, which is hereby created in the fund. Notwithstanding Section 13340 of the Government Code, the moneys in the Glass Processing Fee Account are hereby continuously appropriated to the department for expenditure without regard to fiscal year for the purposes specified in Section 14581.5.

SEC. 11. 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) After making the expenditure specified in subdivision (a), the department may annually expend up to eighteen million five hundred thousand dollars ($18,500,000) 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. 12. Section 14581.5 is added to the Public Resources Code, to read:

14581.5. (a) The department shall expend the funds in the Glass Processing Fee Account to pay the processing fee for redeemed glass beverage containers to each processor, as specified in subdivision (c) of Section 14575. 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 (c) of Section 14573.5.

(b) On or before January 1, 1991, or the earliest practicable date thereafter, the department shall establish a market development program for users and sellers of glass cullet. The department shall

establish the market development program in accordance with the following criteria:

(1) The department shall pay a market development payment to a container manufacturer who purchases cullet from certified processors and who uses cullet in the manufacture of beverage containers, if the container manufacturer provides proof to the department of the amount of the cullet purchased, in tons, the identity of the certified processor from whom the cullet was purchased, the percentage use of cullet in the manufacture of beverage containers, and any other documentation that the department may require. The container manufacturer shall also provide an affidavit from the processor attesting to the number of tons sold to the container manufacturer and the date of delivery of the cullet.

(2) The department shall pay a market development payment to a processor who provides satisfactory proof to the department that the processor sold the cullet to a willing purchaser, other than a container manufacturer, who will reuse the cullet. For purposes of this paragraph, "satisfactory proof" means a shipping report showing the amount of cullet sold in tons, and an affidavit which is from the processor that states that the cullet will be reused, which describes the anticipated end use, and which contains any other documentation that the department may require.

(3) The department shall not pay a market development payment for any cullet which is, or is likely to be, disposed of by landfill. The department may pay a market development payment only for cullet derived from material previously sold to consumers in this state.

(4) Any person who claims a market development payment for cullet which is ineligible for a payment is in violation of this division.

(c) In determining the amount of the market development payment, the department shall consider all of the following:

(1) The anticipated amount of excess funds available in the Glass Processing Fee Account in the coming quarter.

(2) Current scrap values.

(3) The amount of the processing fee then in effect.

(4) Recycling and redemption rates for glass.

(d) The department shall determine the amount of the market development payment on or before January 1 and July 1 of each year, based on the tonnage of cullet sold or purchased. The determination made on or before January 1 shall be paid from January 1 to June 30, inclusive, and the determination made on or before July 1 shall be paid from July 1 to December 31, inclusive. If there are insufficient funds in the Glass Processing Fee Account to make anticipated payments, the department may, in its sole discretion, terminate the market development program or reduce the payment amount until adequate funds are restored to the Glass Processing Fee Account. To avoid potential stockpiling of glass cullet, the department may determine not to publish or otherwise announce the amount of the market development payment in advance.

(e) (1) The establishment of the market development program, including the determination of the market development payment, and the analysis made pursuant to subdivision (c), is exempt from the requirements concerning the adoption of regulations in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the department determines that it is necessary to adopt, amend, or repeal regulations to implement this section and Section 14575, the regulations shall be adopted as emergency regulations and are exempt from subdivision (c) of Section 14536. The Office of Administrative Law shall consider these regulations to be necessary for the immediate preservation of the public peace, health and safety, and the general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section and Section 14575 shall be repealed 180 days after the regulations' effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) If insufficient money is available in the Glass Processing Fee Account to initially fund the market development program at a level determined by the department to be necessary to accomplish the purposes of this section, the department may expend up to fifteen million dollars ($15,000,000) from the Redemption Account from January 1, 1991, to December 31, 1991, inclusive, for purposes of initially funding the market development program. The department shall repay the amount expended from the Redemption Account on or before June 30, 1994, with interest at the Pooled Money Investment Fund rate from the funds in the Glass Processing Fee Account.

(g) The department shall develop procedures for reducing processing fee payments for beverage manufacturers based on projected tonnage of cullet utilized, and reducing the subsequent market development payments paid by container manufacturers providing containers to beverage manufacturers.

(h) Any container manufacturer who receives a market development payment pursuant to this section shall provide a credit to purchasers of glass beverage containers against the purchase price of a glass beverage container in an amount equal to the market development payment received by the container manufacturer.

SEC. 13. 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 including a reasonable financial return, and the recycling locations' average monthly revenue.

(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) 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, if the department monitors the performance of the other recycling center for 60 days and determines that the recycling center is in compliance with this division.

(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 five cents ($0.05) 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 five hundred dollars ($1,500) to a recycling location per month, except that up to 15 percent of the recycling locations receiving a convenience incentive payment may receive up to two thousand dollars ($2,000) per month, as determined by the department.

(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. 14. Section 14586.6 is added to the Public Resources Code, to read:

14586.6. (a) On or before July 1, 1992, the department shall

prepare and submit to the Legislature, a report on the impact and effectiveness of the market development program established by Section 14581.5. The report shall include, but not be limited to, an analysis of all of the following:

(1) The relationship between recycling rates and the level of the market development payment provided to end users.

(2) The effectiveness of the market development payment as an incentive for the purchase of recycled materials.

(3) The impact of existing and projected market development payments levels on end users, taking into account existing processing fee levels.

(4) The recommendations designed to maintain and improve the effectiveness of the market development program established by Section 14581.5 and to ensure that end users can economically purchase recycled materials.

(b) In preparing the report required by this section, the department shall consult fully with all industries and parties affected by the market development program and shall hold at least one public hearing that provides for their full participation.

SEC. 15. Section 14591 of the Public Resources Code, as amended by Section 23 of Chapter 1342 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 one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for any subsequent 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. 16. Section 14591 of the Public Resources Code, as amended by Section 24 of Chapter 1342 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 one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for any subsequent 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. 17. Section 14592 is added to the Public Resources Code, to read:

14592. The department shall include, as part of its annual report prepared pursuant to Section 14542, a report detailing its enforcement efforts pursuant to Sections 14541 and 14591. The report shall include, at a minimum, information on the number of civil penalties and certification revocations, suspensions and refusals imposed, the amount of penalties collected, the types of violations cited, the number of each type of violation, the number of prior violations by the violators cited, and the reasons for violations of each type. The report shall include recommendations for legislation, regulations, or other mechanisms to improve compliance with this division.

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. 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:

In order to encourage the recycling of glass and avoid the disposal of glass by landfill, thereby protecting the public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1275

An act to add and repeal Section 1465.5 to the Penal Code, and to add and repeal Section 9394.5 to the Welfare and Institutions Code, relating to social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 1465.5 is added to the Penal Code, to read:

1465.5. (a) An assessment of two dollars ($2) for every ten dollars ($10) or fraction thereof, for every fine imposed and collected by the courts pursuant to Section 42001.5 of the Vehicle Code for violation of Section 22507.8 of the Vehicle Code, may be imposed by each county upon the adoption of a resolution by the board of supervisors. An assessment imposed by this section shall be collected and disbursed as provided in Section 9394.5 of the Welfare and Institutions Code.

(b) This section shall remain in effect only until July 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1992, deletes or extends that date.

SEC. 2. Section 9394.5 is added to the Welfare and Institutions Code, to read:

9394.5. (a) Each county shall deposit funds collected pursuant to Section 1465.5 of the Penal Code in its general fund, to be available for use only for the support of services provided under this chapter in that county, including county administrative costs not exceeding 10 percent of the funds collected, except as otherwise provided in this subdivision. A county may join with other counties to establish and fund a program of services under this chapter. A county or a number of counties may, in cooperation with the department, fund or jointly fund projects pursuant to Section 9314.5.

(b) Funds utilized pursuant to this section shall not supplant, be offset against, or in any way reduce funds otherwise appropriated for the support of services provided under this chapter.

(c) This section shall remain in effect only until July 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1992, 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:

In order to offset budget reductions to linkages and prevent premature and inappropriate institutionalization of frail elderly and functionally impaired adults, it is necessary that this act take effect immediately.

CHAPTER 1276

An act to add Section 859.1 to the Penal Code, relating to juveniles.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 859.1 is added to the Penal Code, to read:

859.1. (a) In any criminal proceeding in which the defendant is charged with any offense specified in Section 868.8 on a minor under the age of 16 years, the court shall, upon motion of the prosecuting attorney, conduct a hearing to determine whether the testimony of, and testimony relating to, a minor shall be closed to the public in order to protect the minor's reputation.

(b) In making this determination, the court shall consider all of the following:

(1) The nature and seriousness of the offense.

(2) The age of the minor.

(3) The extent to which the size of the community would preclude the anonymity of the victim.

(4) The likelihood of public opprobrium due to the status of the victim.

(5) Whether there is an overriding public interest in having an open hearing.

(6) Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during that proceeding, and demonstrated a substantial probability that the disclosure of his or her identity would cause serious harm to the minor witness.

(7) Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means.

(8) Other factors the court may deem necessary to protect the interests of justice.

CHAPTER 1277

An act to amend Section 10321 of the Public Contract Code, relating to fairs.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 10321 of the Public Contract Code is

amended to read:

10321. (a) The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program.

(b) Notwithstanding any other provision of law, the Department of Food and Agriculture shall develop criteria to be applied for opportunity purchases that are made by district agricultural associations, county and citrus fruit fairs, and the California Exposition and State Fair, individually or cooperatively.

(c) As used in this section, opportunity purchases means purchases locally, either individually or cooperatively, at a price equal to or less than the price available through the state purchasing program on or off state contract.

CHAPTER 1278

An act to amend Section 32320 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 32320 of the Education Code is amended to read:

32320. No state-owned college, university, or other school shall charge any tuition, or incidental fees to any of the following:

(a) Any dependent receiving assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military who has a service-connected disability, or who has been killed in service or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, does not exceed five thousand dollars ($5,000).

(c) Notwithstanding Section 893 of the Military and Veterans Code, the Department of Veterans Affairs may determine the eligibility for fee waivers for a child described in paragraph (b).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of

duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to and collecting from nonresident students an admission fee and rate of tuition nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to schools under the jurisdiction of the State Department of Education or the Director of Education or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

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

In order to ensure that the tuition and fee waiver program established pursuant to Section 32320 of the Education Code will not cause students to become ineligible in the 1990–91 school year for exemptions from tuition and fees which have previously been received, it is necessary that this act take effect immediately.

CHAPTER 1279

An act to add Section 1367.66 to the Health and Safety Code, to add Sections 10123.18 and 11512.155 to the Insurance Code, and to add Section 14132.17 to the Welfare and Institutions Code, relating to health.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 1367.66 is added to the Health and Safety Code, to read:

1367.66 Every individual or group health care service plan contract, except for a specialized health care service plan, which is issued, amended, or renewed, on or after January 1, 1991, and which includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage for an annual cervical cancer screening test upon the referral of the patient's physician, a nurse

practitioner, or certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee.

Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in an existing policy or plan. The Legislature intends in this section to provide that cervical cancer screening services are deemed to be covered if the policy includes coverage for cervical cancer treatment or surgery.

SEC. 2. Section 10123.18 is added to the Insurance Code, to read:

10123.18. Every individual or group policy of disability insurance, regardless of the situs of the contract, which is issued, amended, or renewed, on or after January 1, 1991, and which includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage, upon the referral of a patient's physician, a nurse practitioner, or a certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee, for an annual cervical cancer screening test.

Nothing in this section shall be construed to require an individual or group policy to cover treatment or surgery for cervical cancer 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.

Nothing in this section shall be construed to apply to a policy of disability insurance that only covers a specified disease, specified accidents, or any accidents, if the disability insurer at the time of issuance and each renewal of the policy determines whether each insured or person covered by the policy also has coverage for an annual cervical cancer screening test from another disability insurer, a nonprofit hospital service plan, or a health care service plan, and provided that any insured or person covered by the policy who does not have other coverage for annual cervical cancer screening shall have that coverage under the policy.

SEC. 3. Section 11512.155 is added to the Insurance Code, to read:

11512.155. Every individual or group nonprofit hospital service plan contract regardless of its situs which is issued, amended, or renewed, on or after January 1, 1991, and which includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage for an annual cervical cancer screening test upon the referral of the patient's physician, a nurse practitioner, or a certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee.

Nothing in this section shall be construed to require an individual or group policy to cover treatment or surgery of cervical cancer 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.

Nothing in this section shall be construed to apply to a nonprofit hospital service plan contract that only covers a specified disease, specified accidents, or any accidents, if the nonprofit hospital service plan at the time of issuance and each renewal of coverage under the hospital service plan contract determines whether each person covered by the contract also has coverage for an annual cervical cancer screening test from another nonprofit hospital service plan, a disability insurer, or a health care service plan, and provided that any person covered under the hospital service plan contract who does not have other coverage for annual cervical cancer screening shall have that coverage under the contract.

SEC. 4. Section 14132.17 is added to the Welfare and Institutions Code, to read:

14132.17. Annual cervical cancer tests for screening or diagnostic purposes, upon the referral of a patient's physician, is a covered benefit under this chapter, on or after January 1, 1991, to the extent required or permitted by federal law.

CHAPTER 1280

An act to add and repeal Part 5.5 (commencing with Section 17800) of Division 9 of the Welfare and Institutions Code, relating to homeless persons, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. The Legislature finds and declares that homelessness is a growing problem in California.

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

(a) The Health and Welfare Agency estimated in 1988 that there were nearly 100,000 homeless persons in California, and the United States Conference of Mayors reported that in 1986 and 1987 the demand for emergency shelter increased markedly over that two-year period, with Los Angeles and San Francisco reporting increases of 50 percent.

(b) While an overwhelming majority of the homeless are unemployed males, the fastest growing segment is that of families, and a survey by the National Coalition for the Homeless found that in 1987, in Los Angeles, the total homeless population increased 25 percent, the number of homeless families grew by 40 percent, and that families now comprise 30 percent of the homeless population.

(c) The Legislative Analyst, in the 1988–89 Budget Analysis, indicated that a significant proportion of the homeless suffer from

alcohol problems (30 percent) and drug problems (10 percent), that from 21 to 33 percent of the homeless have a history of mental illness, and that approximately one-third of the homeless are veterans.

(d) The Legislative Analyst, in that report, notes three major factors in the increase in the homeless population, which are:

(1) The percentage of those in poverty in California increased from 10 percent in 1979 to 14 percent in 1985.

(2) The disparity between the supply of affordable housing and the growth in population.

(3) The increase in family breakups as a result of family violence.

(e) In recognition of the national nature of the homeless problem, Congress enacted the Stewart B. McKinney Homeless Assistance Act of 1987, Public Law 100-77, which provides funds to local governments for health services, outreach programs, nonresidential treatment for substance abusers, mental health services, and emergency food and shelter.

(f) Many of the programs eligible under the Stewart B. McKinney Homeless Assistance Act must meet a local matching fund requirement, which may not be available to local governments due to the difference between federal and local funding cycles, and in order to obtain the greatest participation of the federal government in providing services to the homeless, it is necessary to establish a mechanism to provide funds to meet local matching fund requirements.

SEC. 3. Part 5.5 (commencing with Section 17800) is added to Division 9 of the Welfare and Institutions Code, to read:

PART 5.5. HOMELESS ASSISTANCE GUARANTEE PROGRAM

17800. It is the intent of the Legislature that funds shall be made available for the purpose of granting matching fund guarantees pursuant to Section 17801.

17801. (a) (1) In order to meet matching fund requirements for new program funding under the federal Stewart B. McKinney Homeless Assistance Act of 1987 (P.L. 100-77) submitted on or after July 1, 1990, a city, county, or city and county may apply for a letter of credit which guarantees the availability of federally required matching funds by filing an application with an agency designated by the Secretary of the Health and Welfare Agency in the form and manner prescribed by the agency.

(2) The application form authorized by paragraph (1) shall include, but not be limited to, a certification by the applying city, county, or city and county that the funds required for the match will be included in its budget for the following fiscal year.

(3) The guarantee authorized by paragraph (1) shall remain in effect through June 30 following the issuance of the letter of credit, at which time the recipient city, county, or city and county shall fund the matching fund requirement through its budget for the fiscal year commencing on the succeeding July 1.

(b) If unforeseen circumstances prevent the city, county, or city and county from funding the matching fund requirement pursuant to paragraph (3) of subdivision (a), the Controller shall disburse the guaranteed amount as a loan, upon notification of the Department of Finance. The effective date of the loan shall be no later than the last day of the loan guarantee program.

17802. A city, county, or city and county receiving a loan pursuant to Section 17801 shall repay the amount of the loan to the state in four quarterly installments during the fiscal year immediately following the fiscal year in which the loan is made, together with interest at the rate earned by the Pooled Money Investment Account during the period the loan is outstanding. Partial payments shall be applied first to interest and then to principal. The Controller shall deposit loan repayments plus interest into the General Fund.

17803. (a) In the event of a default in any quarterly payment required under Section 17802, the Controller shall take immediate action to recover the balance of the outstanding loan and accrued interest by offsetting against state subvention payments to the defaulting city, county, or city and county.

(b) If a city, county, or city and county is unable to repay a loan received under Section 17801 in a timely manner because of its financial condition, it may file a request with the Director of Finance for an extension of the term of the loan. If the director determines that reasonable cause exists for granting an extension, the director shall certify to the Controller that the term of the loan is extended for a period of not more than one year.

17804. On July 1 of each year, the Health and Welfare Agency shall file a report with the Legislature on the utilization of the program.

17805. This part shall be inoperative on June 30, 1995, and as of January 1, 1996, is repealed, unless a later enacted statute changes or repeals that date, or upon repeal of the Stewart B. McKinney Homeless Assistance Act of 1987, whichever occurs first. Upon repeal of this part, all moneys set aside in the special reserve fund or otherwise made available for disbursement under this part, and subsequent loan repayments received from a city, county, or city and county, shall be deposited in the General Fund.

SEC. 4. (a) The sum of five million dollars ($5,000,000) is appropriated from the General Fund, to be set aside in reserve in a special account in the General Fund, for distribution as loans, as needed, pursuant to Part 5.5 (commencing with Section 17800) of Division 9 of the Welfare and Institutions Code. These funds shall be available for expenditure until June 30, 1991, at which time, any unexpended balances shall revert to the General Fund.

(b) Funds appropriated by subdivision (a) shall not be used to supplant those funds appropriated by Item 4440-101-001 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985).

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 timely funding to assist local agencies to provide assistance to the homeless, it is necessary that this act take effect immediately.

CHAPTER 1281

An act to add Section 68543.6 to the Government Code, relating to the Judges' Retirement System.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 68543.6 is added to the Government Code, to read:

68543.6. Notwithstanding any other provision of law, a retired judge who is at least 63 years of age may be assigned under this section to sit in a court without loss or interruption of benefits provided by the Judges' Retirement System, if that service does not exceed in any fiscal year, a total of 70 working days or 560 hours for all assignments. In addition to regular retirement benefits, a retired judge while so sitting shall be paid 92 percent of the compensation of a judge of the court to which he or she is assigned. However, in no case, shall the compensation paid pursuant to this section in any fiscal year, when added to the retired judge's retirement allowance and all other compensation for service on assignment, exceed 92 percent of a superior court judge's annual compensation. The assigned judge shall also be allowed expenses for travel, board, and lodging during the period of the assignment in accordance with rules adopted by the Board of Control which are applicable to officers of the state provided for in Article VI of the Constitution while traveling on official state business. The state shall reimburse the Judges' Retirement Fund in the amount of the allowance which it has paid to the judge while sitting on assignment, and shall pay into the fund the 8 percent difference between the compensation of the retired judge while so assigned and the compensation of a judge of the court to which the retired judge is assigned. 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, together with the additional compensation and allowed expenses required by this section. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3. This section shall not be operative in any county until such time as the board of supervisors shall, by resolution, make this section applicable in the county.

CHAPTER 1282

An act to amend Sections 712 and 713 of the Civil Code, relating to real property.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 712 of the Civil Code is amended to read:

712. Every provision contained in or otherwise affecting a grant of a fee interest in, or purchase money security instrument upon, real property in this state heretofore or hereafter made, which purports to prohibit or restrict the right of the property owner or his or her agent to display or have displayed on the real property, or on real property owned by another with that person's consent, a sign which is reasonably located, in plain view of the public, and is of reasonable dimensions and design advertising the property for sale, lease, or exchange, or advertising directions to the property, by the property owner or his or her agent is void as an unreasonable restraint upon the power of alienation.

This section shall operate retrospectively, as well as prospectively, to the full extent that it may constitutionally operate retrospectively.

A sign which conforms to the ordinance adopted in conformity with Section 713 shall be deemed to be of reasonable dimension and design pursuant to this section.

SEC. 2. Section 713 of the Civil Code is amended to read:

713. Notwithstanding any provision of any ordinance, an owner of real property or his or her agent may display or have displayed on the owner's real property, or on real property owned by another with that person's consent, a sign which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, as determined by the city, county, or city and county, advertising the following:

(a) That the property is for sale, lease, or exchange by the owner or his or her agent.

(b) Directions to the property.

(c) The owner's or agent's name.

(d) The owner's or agent's address and telephone number.

Nothing in this section limits any authority which a person or local governmental entity may have to limit or regulate the display or placement of a sign on a private or public right-of-way.

CHAPTER 1283

An act to amend Sections 19613 and 19641 of the Business and Professions Code, relating to horseracing.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 19613 of the Business and Professions Code, as added by Section 2.5 of Chapter 251 of the Statutes of 1990, is amended to read:

19613. (a) 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 conducting a fair racing meeting or conducting a mixed breed racing meeting shall provide for the distribution of purses or commissions for any racing meeting under this subdivision based on the respective parimutuel pools during the previous corresponding meeting, if any.

(c) This section shall become operative on January 1, 1993.

SEC. 2. Section 19641 of the Business and Professions Code, as amended by Section 4 of Chapter 251 of the Statutes of 1990, is amended to read:

19641. (a) Except as provided in subdivision (b), 126 days after the close of any horseracing meeting, an amount equal to 90 percent of any redistributable money in a parimutuel pool subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, shall be paid to the board.

The money received by the board under this subdivision resulting from thoroughbred, harness, or quarter horse meetings, but excluding the meetings of the California Exposition and State Fair or of a county, district agricultural association, or citrus fruit fair, shall be used by the board to support research on matters pertaining to horseracing and racetrack security, but this money is subject to annual budgetary review by the Legislature. All of the redistributable money received by the board from other meetings shall be paid immediately into the State Treasury to the credit of the General Fund.

(b) One hundred twenty-six days after the close of any horseracing meeting, one-half of the redistributable money resulting from the thoroughbred, harness, or quarter horse meetings, but excluding the meetings of the California Exposition and State Fair or county, district agricultural association, or citrus fruit fair meetings, shall be distributed to a welfare fund established by the horsemen's organization contracting with the association with respect to the conduct of racing meetings for the benefit of horsemen, and that organization shall make an accounting to the board within one

calendar year of the receipt of the payment.

(c) Except as provided in subdivision (a) or (b), 140 days after the close of any horseracing meeting, any remaining redistributable money in a parimutuel pool subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, shall be distributed one-half to the board, for the purposes specified in subdivision (a), and one-half to the welfare fund established by the horsemen's organization described in subdivision (b).

(d) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 3. Section 19641 of the Business and Professions Code, as added by Section 5 of Chapter 251 of the Statutes of 1990, is amended to read:

19641. (a) One hundred twenty-six days after the close of any horseracing meeting, an amount equal to 90 percent of any redistributable money in a parimutuel pool subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, shall be paid to the board.

The money received by the board under this subdivision resulting from thoroughbred, harness, or quarter horse meetings, but excluding the meetings of the California Exposition and State Fair or of a county, district agricultural association, or citrus fruit fair, shall be used by the board to support research on matters pertaining to horseracing and racetrack security, but this money is subject to annual budgetary review by the Legislature. All the redistributable money received by the board from other meetings shall be paid immediately into the State Treasury to the credit of the General Fund.

(b) Except as provided in subdivision (a), 140 days after the close of any horseracing meeting, any remaining redistributable money in a parimutuel pool subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, shall be paid to the board for the purposes specified in subdivision (a).

(c) This section shall become operative on January 1, 1993.

CHAPTER 1284

An act to amend Sections 3071, 3072, 3073, and 3074 of the Civil Code, and to amend Sections 22851.8, 22851.10, and 22851.12 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 3071 of the Civil Code is amended to read:

3071. (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over one thousand dollars ($1,000). A filing fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from the registration certificates within the vehicle, and the name and address of any person whom the lienholder knows or reasonably should know claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts which give rise to the lien.

(b) Upon receipt of an application made pursuant to subdivision (a), the department shall do all of the following:

(1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the vehicle bears indicia of registration in that state.

(2) By certified mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) The person has a right to a hearing in court.

(3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 15 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant.

(5) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 20 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle.

(e) Service on the declarant by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, the lienholder may proceed with the judicial proceeding.

(f) Upon receipt of authorization to conduct the lien sale from the department, the lienholder shall do all of the following:

(1) At least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located. If there is no newspaper published in the county, notice shall be given by posting a Notice of Sale form in three of the most public places in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10 consecutive days prior to and including the day of the sale.

(2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the day of sale, by certified mail with return receipt requested, to each of the following:

(A) The registered and legal owners of the vehicle, if registered in this state.

(B) All persons known to have an interest in the vehicle.

(C) The department.

(g) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, year model, vehicle identification number, license number, and state of registration, if available, and the specific date, exact time, and place of sale. For motorcycles, the engine number shall also be included.

(h) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at

the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

(i) Within 10 days after the sale of any vehicle pursuant to this section, the legal or registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum from the due date thereof or the date when that sum was advanced until the repayment. If the vehicle is not redeemed, all lien sale documents required by the department shall then be completed and delivered to the buyer.

SEC. 2. Section 3072 of the Civil Code is amended to read:

3072. (a) For vehicles with a value determined to be one thousand dollars ($1,000) or less, the lienholder shall apply to the department for the names and addresses of the registered and legal owners of record.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send, by certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, a completed Notice of Pending Lien Sale form, a blank Declaration of Opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, and to any other person known to have an interest in the vehicle. The lienholder shall additionally send a copy of the completed Notice of Pending Lien Sale form to the department by certified mail on the same day that the other notices are mailed pursuant to this subdivision.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The specific date, exact time, and place of sale, which shall be set not less than 31 days, but not more than 35 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(4) All of the following statements.

(A) The amount of the lien and the facts concerning the claim which gives rise to the lien.

(B) The person has a right to a hearing in court.

(C) If a court hearing is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 15 days of the date the Notice of Pending Lien Sale form was mailed.

(D) If the Declaration of Opposition form is signed and returned, the lienholder shall be allowed to sell the vehicle only if he or she

obtains a court judgment or if he or she obtains a subsequent release from the declarant.

(E) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the completed Declaration of Opposition form within the time specified, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 20 days of the notice and judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle.

(e) Service on the declarant by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, the lienholder may proceed with the judicial proceeding.

(f) At least 10 consecutive days prior to and including the day of the sale, the lienholder shall post a Notice of Pending Lien Sale form in a conspicuous place on the premises of the business office of the lienholder. The Notice of Pending Lien Sale form shall state the specific date and exact time of the sale and description of the vehicle, including the make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included The notice of sale shall remain posted until the sale is completed.

(g) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner. All lien sale documents required by the department shall be completed and delivered to the buyer immediately following the sale.

SEC. 3. Section 3073 of the Civil Code is amended to read:

3073. The proceeds of a vehicle lien sale under this article shall be disposed of as follows:

(a) The amount necessary to discharge the lien and the cost of processing the vehicle shall be paid to the lienholder. The cost of processing shall not exceed seventy dollars ($70) for each vehicle valued at one thousand dollars ($1,000) or less, or one hundred dollars ($100) for each vehicle valued over one thousand dollars ($1,000).

(b) The balance, if any, shall be forwarded to the Department of Motor Vehicles within 15 days of any sale conducted pursuant to

Section 3071 or within five days of any sale conducted pursuant to Section 3072 and deposited in the Motor Vehicle Account in the State Transportation Fund.

(c) Any person claiming an interest in the vehicle may file a claim with the Department of Motor Vehicles for any portion of the funds from the lien sale which were forwarded to the department pursuant to subdivision (b). Upon a determination of the Department of Motor Vehicles that the claimant is entitled to an amount from the balance deposited with the department, the department shall pay that amount determined by the department, which amount shall not exceed the amount forwarded to the department pursuant to subdivision (b) in connection with the sale of the vehicle in which the claimant claims an interest. The department shall not honor any claim unless the claim has been filed within three years of the date the funds were deposited in the Motor Vehicle Account.

SEC. 4. Section 3074 of the Civil Code is amended to read:

3074. The lienholder shall be able to recover the actual costs incurred in lien sale preparations from any person who redeems the vehicle prior to a lien sale conducted pursuant to this chapter. These costs may commence and become part of the possessory lien when the lienholder requests the names and addresses of all persons having an interest in the vehicle from the Department of Motor Vehicles. This charge shall not be made in the case of any vehicle redeemed before the third day of possession, and shall not exceed seventy dollars ($70) for each vehicle valued at one thousand dollars ($1,000) or less, or one hundred dollars ($100) for each vehicle valued over one thousand dollars ($1,000).

SEC. 5. Section 22851.8 of the Vehicle Code is amended to read:

22851.8. (a) The lienholders shall, within 15 working days following the date of possession of the vehicle, make a request to the Department of Motor Vehicles for the names and addresses of all persons having an interest in the vehicle. No storage charge shall accrue beyond the 15-day period unless the lienholder has made a request to the Department of Motor Vehicles as provided for in this section.

(b) By certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, the lienholder shall immediately, upon receipt of this information, send the following prescribed forms and enclosures to the registered owner and legal owner at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle:

(1) A completed form entitled "Notice of Intent to Dispose of a Vehicle Valued at $300 or Less."

(2) A blank form entitled "Declaration of Opposition."

(3) A return envelope preaddressed to the lienholder.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following:

(1) A description of the vehicle, including make, year model,

identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(3) The following statements and information:

(A) The amount of the lien.

(B) The facts concerning the claim which gives rise to the lien.

(C) The person has a right to a hearing in court.

(D) If a hearing in court is desired, a Declaration of Opposition form shall be signed under penalty of perjury and returned to the lienholder within 10 days of the date the notice form specified in paragraph (1) of subdivision (b) was mailed.

(E) If the Declaration of Opposition form is signed and mailed, the lienholder shall be allowed to dispose of the vehicle only if the lienholder obtains a court judgment or a subsequent release from the declarant.

(F) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form, and the declarant may appear to contest the claim.

(G) The declarant may be liable for court costs if a judgment is entered in favor of the lienholder.

(4) A statement that the lienholder may dispose of the vehicle to a licensed dismantler or scrap iron processor if it is not redeemed or if a Declaration of Opposition form is not signed and mailed to the lienholder within 10 days of the date the notice form specified in paragraph (1) of subdivision (b) was mailed.

(d) If the lienholder receives a completed Declaration of Opposition form within the time prescribed, the vehicle shall not be disposed of unless the lienholder files an action in court within 20 days of the date the notice form specified in paragraph (1) of subdivision (b) was mailed and a judgment is subsequently entered in favor of the lienholder or unless the declarant subsequently releases his or her interest in the vehicle.

(e) Service on the declarant by certified mail, return receipt requested, which receipt is signed by the addressee at the address shown on the Declaration of Opposition form, shall be effective. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, the lienholder may proceed with the judicial proceeding or the disposal of the vehicle. The proof of service shall be submitted to the Department of Motor Vehicles with the documents specified in Section 22851.10.

SEC. 6. Section 22851.10 of the Vehicle Code is amended to read:

22851.10. (a) Any vehicle determined to have a value not exceeding three hundred dollars ($300) pursuant to Section 22670 which was stored pursuant to this chapter, and which remains unclaimed, or for which reasonable towing and storage charges remain unpaid, shall be disposed of only to a licensed dismantler or

scrap iron processor not earlier than 15 days after the date the Notice of Intent to Dispose of a Vehicle Valued at $300 or Less form required pursuant to subdivision (b) of Section 22851.8 was mailed, unless a Declaration of Opposition form has been signed and returned to the lienholder.

(b) If the vehicle has been disposed of to a licensed dismantler or scrap iron processor, the lienholder shall forward the following forms and information to the licensed dismantler or scrap iron processor within five days:

(1) A statement, signed under penalty of perjury, that a properly executed Declaration of Opposition form was not received.

(2) A copy of the notice sent to all interested parties.

(3) A certification from the public agency which made the determination of value pursuant to Section 22670.

(4) The proof of service pursuant to subdivision (e) of Section 22851.8 or a copy of the court judgment, if any in favor of the lienholder entered pursuant to subdivision (d) of Section 22851.8.

(5) The name, address, and telephone number of the licensed dismantler or scrap iron processor who received the vehicle.

(6) The amount the lienholder received for the vehicle.

(c) A vehicle disposed of pursuant to this section shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

SEC. 7. Section 22851.12 of the Vehicle Code is amended to read:

22851.12. The lienholder may recover the actual cost, or, in the case of volume sales by or on behalf of the lienholder, the average per vehicle cost, incurred in the processing for disposal of any vehicle, not to exceed seventy dollars ($70) in the case of a vehicle having a value determined to be one thousand dollars ($1,000) or less pursuant to Section 22670, and not to exceed one hundred dollars ($100) in the case of a vehicle having a value determined to be greater than one thousand dollars ($1,000), from any person who redeems the vehicle prior to disposal. These costs may commence and become part of the possessory lien when the lienholder requests the names and addresses of all persons having an interest in the vehicle from the Department of Motor Vehicles. This charge shall not be made in the case of any vehicle redeemed before the third day of possession.

CHAPTER 1285

An act to amend, repeal, and add Section 2910.5 of, and to add and repeal Sections 830.55 and 6257 of, the Penal Code, relating to corrections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 830.55 is added to the Penal Code, to read:

830.55. (a) As used in this section, a correctional officer is a peace officer, employed by a city which operates a facility described in Section 2910.5 or Section 1753.3 of the Welfare and Institutions Code under contract with the Department of Corrections or the Department of the Youth Authority, who has the authority and responsibility for maintaining custody of prisoners or wards, and performs tasks related to the operation of a detention facility used for the detention of persons who have violated parole or are awaiting parole back into the community or, upon court order, either for their own safekeeping or for the specific purpose of serving a sentence therein.

(b) A correctional officer shall have no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the superintendent of the facility, while engaged in transporting prisoners, guarding hospitalized prisoners, or suppressing riots, lynchings, escapes, or rescues in or about a detention facility established pursuant to Section 2910.5 or Section 1753.3 of the Welfare and Institutions Code.

(c) Each person described in this section as a correctional officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a correctional officer shall, within 180 days following the date of the initial assignment as an officer, satisfactorily complete the jail operations course prescribed by the Board of Corrections pursuant to Section 6030. Persons designated correctional officers, before the expiration of the 90- and 180-day periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties.

(d) This section shall not be construed to confer any authority upon a correctional officer except while on duty.

(e) A correctional officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer, may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant, and may make warrantless arrests pursuant to Section 836.5

only during the duration of his or her job.

(f) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1992, deletes or extends that date.

SEC. 2. Section 830.55 is added to the Penal Code, to read:

830.55. (a) As used in this section, a correctional officer is a peace officer, employed by a city which operates a facility described in Section 2910.5 or Section 1753.3 of the Welfare and Institutions Code or facilities operated by counties pursuant to Section 6241 or 6242 of the Penal Code under contract with the Department of Corrections or the Department of the Youth Authority, who has the authority and responsibility for maintaining custody of prisoners or wards, and performs tasks related to the operation of a detention facility used for the detention of persons who have violated parole or are awaiting parole back into the community or, upon court order, either for their own safekeeping or for the specific purpose of serving a sentence therein.

(b) A correctional officer shall have no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the superintendent of the facility, while engaged in transporting prisoners, guarding hospitalized prisoners, or suppressing riots, lynchings, escapes, or rescues in or about a detention facility established pursuant to Section 2910.5 or Section 1753.3 of the Welfare and Institutions Code.

(c) Each person described in this section as a correctional officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a correctional officer shall, within 180 days following the date of the initial assignment as an officer, satisfactorily complete the jail operations course prescribed by the Board of Corrections pursuant to Section 6030. Persons designated correctional officers, before the expiration of the 90- and 180-day periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties.

(d) This section shall not be construed to confer any authority upon a correctional officer except while on duty.

(e) A correctional officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer, may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant, and may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job.

(f) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1992, deletes or extends that date.

SEC. 3. Section 2910.5 of the Penal Code is amended to read:

2910.5. (a) Pursuant to Section 2910, the Director of Corrections may enter into a long-term agreement not to exceed 20 years with

a city, county, or city and county to place parole violators in a facility which is specially designed and built for the incarceration of parole violators and state prison inmates.

(b) The agreement shall provide that persons providing security at the facilities shall be peace officers as defined in Sections 830.1 and 830.55 who have completed the minimum standards for the training of local correctional peace officers established under Section 6035.

(c) A parole violator or other inmate may be confined in a facility established under this section.

(1) If convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or convicted of a crime, as defined in Sections 207, 210.5, 214, 217.1, or 220, or if that person has a history of escape or attempted escape, the Department of Corrections shall, prior to placing the parole violator or inmate in the facility, review each individual case to make certain that this placement is in keeping with the need to protect society.

(2) No inmate or parole violator who has received a sentence of life imprisonment within the past 20 years shall be eligible.

(3) The superintendent of the parole violator facility shall also review each individual case where the inmate or parolee is convicted of a crime specified in this subdivision and ascertain whether this is an appropriate placement. The superintendent shall reject those whom he or she believes are inappropriate due to their propensity for violence or escape.

(4) No parole violator who receives a revocation sentence greater than 12 months shall be confined in a facility established under this section.

(5) The Department of Corrections shall establish additional guidelines as to inmates eligible for the facilities

(d) In determining the reimbursement rate pursuant to an agreement entered into pursuant to subdivision (a), the director shall take into consideration the costs incurred by the city, county, or city and county for services and facilities provided, and any other factors which are necessary and appropriate to fix the obligations, responsibilities, and rights of the respective parties.

(e) Facilities operated by the county shall be under the supervision of the sheriff. Facilities operated by the city shall be under the supervision of a chief of police or a facility superintendent who shall have at least five years similar experience.

(f) Cities or counties contracting with the Department of Corrections for a facility pursuant to this section shall be responsible for managing and maintaining the security of the facility. No city or county may contract with any private provider to manage, operate, or to maintain the security of the facility.

SEC 4. The Commission on Peace Officers Standards and Training shall conduct a study and determine the appropriate powers and authority of local correctional peace officers, as described in Section 830.55 of the Penal Code A report based upon this study shall be submitted to the Legislature on or before March

15, 1991.

SEC. 5. Section 2 of this bill shall only become operative if Senate Bill 2000 is enacted and becomes effective on or before January 1, 1991, and Senate Bill 2000 adds Sections 6241 and 6242 to the Penal Code, in which case Section 1 of this bill shall not become operative.

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:

Because the facilities designated in this bill will be operational prior to January 1, 1991, it is necessary that this act take immediate effect.

CHAPTER 1286

An act to amend Section 5621 of, and to add Section 508.5 to, the Public Resources Code, relating to parks and recreation.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 508.5 is added to the Public Resources Code, to read:

508.5. Notwithstanding Section 14, or any other provision of law, the City and County of San Francisco shall be considered both a city and a county by the Department of Parks and Recreation for purposes of the allocation of funds pursuant to any provision of this code.

SEC. 2. Section 5621 of the Public Resources Code is amended to read:

5621. As used in this chapter:

(a) "City" and "county" both include the City and County of San Francisco; "county" does not include a county service area, or zone therein, within the County of San Bernardino empowered to provide public park and recreation services pursuant to Chapter 2.2 (commencing with Section 25210.1) of Part 1 of Division 2 of Title 3 of the Government Code.

(b) "Districts" means regional park districts formed under Article 3 (commencing with Section 5500) of Chapter 3; recreation and park districts formed under Chapter 4 (commencing with Section 5780); any public utility district formed under Division 7 (commencing with Section 15501) of the Public Utilities Code in a nonurbanized area that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; any community services district formed under Division 3 (commencing with Section 61000) of Title 6 of the

Government Code in a nonurbanized area which is authorized to provide public recreation as specified in subdivision (e) of Section 61600 of the Government Code; any memorial district formed under Chapter 1 (commencing with Section 1170) of Division 6 of the Military and Veterans Code that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; the Malaga County Water District exercising powers authorized under Section 31133 of the Water Code; and any county service area, or zone therein, within the County of San Bernardino which is empowered to provide public park and recreation services pursuant to Chapter 2.2 (commencing with Section 25210.1) of Part 1 of Division 2 of Title 3 of the Government Code, which is actually providing public park and recreation services, and which was reorganized prior to January 1, 1987, from a park and recreation district to a county service area or zone.

(c) "Urbanized area" consists of a central city or cities and surrounding closely settled territory, as determined by the Department of Finance on the basis of the most recent verifiable census data. "Urbanized county" means any county with a population of 200,000 or more, as determined by the Department of Finance on the basis of the most recent verifiable census data.

(d) "Heavily urbanized area" means a large city with a population of 300,000 or more and a large county or regional park district with a population of 1,000,000 or more, as determined by the Department of Finance on the basis of the most recent verifiable census data.

(e) "Nonurbanized area" means any city, county, or district which does not qualify as an urbanized area or urbanized county under the definitions in subdivision (c).

(f) "Block grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities.

(g) "Need basis grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities on a project-by-project basis, based upon need.

(h) "Account" means the Roberti-Z'berg-Harris Urban Open-Space and Recreation Program Account in the General Fund.

(i) "Special major maintenance project" means a rehabilitation or refurbishing activity performed on an annual or more infrequent interval, excluding capital improvements and routinized or other regularly scheduled and performed tasks such as grounds mowing, hedge trimming, garbage removal, and watering. Special major maintenance project includes activities which will reduce energy requirements to operate recreational lands or facilities.

(j) "Innovative recreation program" means specially designed, creative social, cultural, and human service activities which by their nature are intended to respond to the unique and otherwise unmet recreation needs of special urban populations, including, but not limited to, senior citizens, physically or emotionally handicapped,

chronic and "new" poor, single parents, "latchkey" children, and minorities. The term includes special transportation programs designed to facilitate access of these groups to parks and recreational programs and facilities.

CHAPTER 1287

An act to add Section 1348.1 to the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 1348.1 is added to the Fish and Game Code, to read:

1348.1. Before the board authorizes the purchase of any land, or any interest therein, the board shall notify all owners of record of adjacent parcels of land of the intent of the board to purchase the land. The notice to the adjacent owners of land and the public notice shall include an explanation of the proposed use of the land by the department.

CHAPTER 1288

An act to amend Sections 8300, 8304, 8305.5, 8306.1, 8306.2, 8306.7, 8306.8, 8310, and 12009 of, to amend, repeal, and add Sections 8305 and 8308 of, to amend and renumber Section 8305.10 of, to add Sections 8305.10, 8306.6, and 8312 to, to add and repeal Sections 8307, 8307.2, 8311, 8313, and 8314 of, to repeal and add Sections 8301 and 8303 of, and to repeal Sections 8304.5 and 8306.4 of, the Fish and Game Code, relating to abalone, and making an appropriation therefor.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 8300 of the Fish and Game Code is amended to read:

8300. (a) No species of abalone (genus Haliotis) shall be taken during the months of January, February, and August.

(b) The department shall permanently revoke the commercial fishing license and any commercial fishing permits of any person convicted of a violation of subdivision (a). That person shall not,

thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes.

SEC. 2. Section 8301 of the Fish and Game Code is repealed.

SEC. 3. Section 8301 is added to the Fish and Game Code, to read:

8301. (a) It is unlawful to remove abalone from the shell or to possess abalone which have been removed from the shell except pursuant to Section 8305.10.

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of any person convicted of a violation of subdivision (a) if the court finds that the person possessed more than 24 abalone removed from the shell at the time of the offense. That person shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes.

SEC. 4. Section 8303 of the Fish and Game Code is repealed.

SEC. 5. Section 8303 is added to the Fish and Game Code, to read:

8303. Only diving apparatus authorized by the commission may be used to take abalone for commercial purposes. Abalone may be taken only when the permittee is submerged.

SEC. 6. Section 8304 of the Fish and Game Code is amended to read:

8304. (a) It is unlawful to take, possess, sell, or purchase any abalone, the shell of which, measured in greatest diameter, is less than the following specifications:

(1) Red abalone, 7¾ inches.

(2) Green abalone, 7 inches.

(3) Pink abalone and white abalone, 6¼ inches.

(4) Black abalone, 5¾ inches.

(5) All other abalone, 4 inches.

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of any person convicted of a violation of subdivision (a) if the court finds that the person possessed more than 24 undersized abalone at the time of the offense. That person shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes.

SEC. 7. Section 8304.5 of the Fish and Game Code is repealed.

SEC. 8. Section 8305 of the Fish and Game Code is amended to read:

8305. (a) It is unlawful to take abalone for commercial purposes in Districts 6, 7, 16, 17, and 19A; in District 10 north of Point Lobos; and in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

(b) It is unlawful to take abalone for commercial purposes in waters less than 20 feet deep in District 19 adjacent to the mainland south of Point Dume; in District 20 between Southeast Rock and China Point; and in District 20A.

(c) Black abalone may not be taken at any time for commercial

purposes within one mile of the shores of Anacapa, Santa Barbara, or Santa Cruz Island, or along the mainland coast.

(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. 8.5. Section 8305 is added to the Fish and Game Code, to read:

8305. (a) It is unlawful to take abalone for commercial purposes in Districts 6, 7, 16, 17, and 19A, in District 10 north of Point Lobos, and in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

(b) It is unlawful to take abalone for commercial purposes in waters less than 20 feet deep south of Point Dume in District 19 adjacent to the mainland, in District 20 between Southeast Rock and China Point, and in District 20A.

(c) Black abalone may not be taken at any time for commercial purposes along the mainland coast, except as otherwise specifically authorized by this article.

(d) This section shall become operative on January 1, 1994.

SEC. 9. Section 8305.5 of the Fish and Game Code is amended to read:

8305.5. (a) Notwithstanding Section 8305, in District 19, abalone may be taken for commercial purposes within one mile of the shores of Santa Rosa, San Nicolas, San Clemente, or San Miguel Island and in less than 20 feet of water.

(b) Notwithstanding Section 10666, in the James V. Fitzgerald Marine Reserve in District 10, abalone may be taken for commercial purposes in waters 20 feet or more in depth, unless otherwise prohibited or restricted by this article.

(c) In District 10 south of Point Lobos, except as provided in subdivision (b) or unless otherwise prohibited or restricted by this article, abalone may be taken for commercial purposes if the person taking the abalone is submerged.

(d) Notwithstanding subdivision (a), (b), or (c), if the director makes a written finding that the further taking of abalone will endanger the resource in an area, the director may close that area or any part of that area to the taking of abalone for commercial purposes until such time as the director determines that the taking will no longer endanger the resource.

SEC. 10. Section 8305.10 is added to the Fish and Game Code, to read:

8305.10. If the commission opens or closes a designated area pursuant to Section 8305.9, the commission shall not open or close any other area to mitigate or offset the opening or closing of the designated area.

SEC. 10.5. Section 8305.10 of the Fish and Game Code, as added by Chapter 1400 of the Statutes of 1989, is amended and renumbered to read:

8305.11. (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, north of Point Sur 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.

(d) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permit of any person convicted of a violation of subdivision (a) if the court finds that the person was diving in an area north of Point Sur in which the commercial taking of abalone was prohibited or the season for the commercial taking of abalone was closed at the time of the offense. That person shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes.

SEC. 11. Section 8306.1 of the Fish and Game Code is amended to read:

8306.1. (a) When the commission establishes the number of abalone diving permits which shall be issued, it shall determine the reasonable number of those permits, if any, which shall be issued to persons qualifying as a new entrant pursuant to subdivision (b) of Section 8306.2.

(b) If the number of abalone diving permits which the commission determines may be issued exceeds the number of permits issued pursuant to subdivisions (a) and (b) of Section 8306.2, the department may issue any remaining permits to persons qualifying as new entrants pursuant to subdivision (c) of Section 8306.2.

SEC 12. Section 8306.2 of the Fish and Game Code is amended to read:

8306.2. (a) Abalone diving permits shall be issued to prior permittees who during the preceding calendar year landed at least 1,200 pounds of abalone or 320 abalone for which receipts were received as provided in Section 8043. The person affected by this section may appeal to the commission, submitting circumstances surrounding nonuse of a permit, and request classification as a prior permittee. The commission may so classify the appellant if it finds the nonuse of the permit was for reasons beyond the control of the

applicant under the circumstances.

(b) If the commission determines that abalone diving permits may be issued under this subdivision, an abalone diving permit may be issued to an applicant if the applicant does not qualify as a prior permittee and if the applicant meets either of the following conditions:

(1) The applicant has at least two years experience as an abalone diver under a permit issued pursuant to Section 8306.8.

(2) The applicant has at least three years' experience as an abalone crewmember under a permit issued pursuant to Section 8306.8.

(c) If the total number of abalone diving permits which the commission determines may be issued exceeds the number of abalone diving permits issued pursuant to subdivisions (a) and (b), abalone diving permits may be issued to applicants under this subdivision if the applicant does not qualify as a prior permittee and the applicant meets either of the following conditions:

(1) The applicant has at least three years experience as an abalone diver or crewmember.

(2) The applicant successfully completes a proficiency test administered by the department, under regulations prescribed by the commission.

SEC. 13. Section 8306.4 of the Fish and Game Code is repealed.

SEC. 14. Section 8306.6 is added to the Fish and Game Code, to read:

8306.6. (a) A commercial abalone diving permit may be suspended, revoked, or canceled by the commission upon conviction of any violation of this article, or any regulation adopted pursuant to this article, or upon conviction of violating any of the terms or conditions of the permit by the holder of the permit, or by that person's agent, employee, or any person acting under the holder's direction and control.

(b) A commercial abalone diving permit shall be revoked by a court upon conviction of a violation punishable under Section 8311 or 8312, as provided in those sections. The court shall notify the department upon conviction of any person of that violation.

SEC. 15. Section 8306.7 of the Fish and Game Code is amended to read:

8306.7. (a) When a complaint has been filed in a court of competent jurisdiction charging a holder of a commercial abalone diving or crewmember permit with a violation of Section 8300, 8301, 8304, or 8305.10, and no disposition of the complaint has occurred within 90 days after it has been filed in the court, the department may suspend the commercial abalone permit of that person.

(b) Whenever the department proposes to suspend a permit under this section, notice and an opportunity to be heard shall be given before taking the action. The notice shall contain a statement setting forth the proposed action and the grounds therefor, and notify the person of his or her right to a hearing as provided in this

section. Within 10 days after the receipt of the notice from the department, the permitholder may request a hearing. The hearing shall be held by the commission at the next regularly scheduled hearing of the commission held more than 30 days after the notice of intent to suspend the permit was sent. The permitholder shall be given 10 days' notice of the time and place of the hearing.

(c) A decision shall be made within a reasonable time on whether the permit shall be suspended until the disposition of the complaint by the court. In determining whether to order the suspension of the permit, the commission shall consider whether or not the violation could have a detrimental effect on the resources and whether or not a suspension of the permit is in the best public interest, and shall find whether there is sufficient evidence that a violation has occurred. A failure to make a finding that there is sufficient evidence that a violation has occurred or a finding there is insufficient evidence shall terminate the proceedings for suspension of the permit under this section.

(d) If the permitholder is acquitted of the charges or the charges against him or her have been dismissed, any suspension of the permit under this section is thereby terminated.

(e) No complaint shall be filed in a court charging a commercial abalone permitholder with a violation of Section 8300, 8301, 8304, or 8305.10, unless evidence supporting the charge has been reviewed by the appropriate county or city prosecuting agency and a criminal complaint has been issued by that agency.

SEC. 16. Section 8306.8 of the Fish and Game Code is amended to read:

8306.8. It is unlawful to take abalone for commercial purposes except under a abalone diving permit. It is unlawful to assist an abalone diving permittee to take abalone for commercial purposes except under an abalone crewmember permit. Abalone crewmember permittees shall not dive from a vessel while an abalone diving permittee is taking abalone for commercial purposes from that vessel or when abalone are aboard that vessel. Abalone diving permits and abalone crewmember permits shall be issued by the department under regulations prescribed by the commission. The abalone diving permit fee is two hundred fifty dollars ($250). The abalone crewmember permit fee is twenty-five dollars ($25).

SEC. 17. Section 8307 is added to the Fish and Game Code, to read:

8307. (a) Notwithstanding Section 8102, an abalone diving permit issued pursuant to Section 8306.2 may be voluntarily transferred by the permittee, if the permittee has no charges pending for a violation punishable under Section 8300, 8301, 8304, 8305, 8305 5, 8305 10, or 8312 at the time of the transfer, under either of the following conditions:

(1) The permittee has held an abalone diving permit in each of the preceding three years and has made the minimum landings required for each of those years.

(2) The permittee has had a permanent injury or illness that prevents the permittee from commercial diving, and that fact is evidenced by a written finding by a licensed physician and surgeon.

(b) Until the total number of abalone diving permits is 70 or less, a permit may be transferred under this section only if a second permit is surrendered to the department for cancellation at the same time the application for the transfer is submitted to the department.

(c) An abalone diving permit may be transferred pursuant to this section to a person only if that person meets all of the following qualifications:

(1) The person, at that time, holds a commercial fishing license issued pursuant to Section 7850.

(2) The person has held an abalone crewmember permit in any prior three years or the person has held an abalone diving permit in any two prior years and the person has not had the permit suspended or revoked for a violation of Section 8300, 8301, 8304, 8305, 8305.5, or 8305.10.

(3) The person submits to the department a notarized letter from each of the permittees described in subdivision (b), each of which includes a statement identifying the person to whom the abalone permit is to be transferred and setting forth the conditions of the transfer, and any necessary documentation that the department may reasonably require to prove that the permittee is eligible to transfer the permit.

(d) The application for the transfer of an abalone diving permit shall be submitted by the person to whom the permit is to be transferred to the department together with the proof that the department may reasonably require to establish the qualifications of that person. The applicant for the transferred permit shall include with the application a transfer processing fee of two hundred fifty dollars ($250). The department may increase the transfer processing fee as required to pay the costs of conducting any additional search of the records for violations committed by the parties.

(e) Upon determining that the transferee of the abalone diving permit under this section is qualified, the department shall issue an abalone diving permit to the transferee which is valid for the remainder of the then current season. An abalone permit issued pursuant to this subdivision shall be renewed in the next succeeding season notwithstanding the landing requirements of subdivision (a) of Section 8306.2.

(f) After the transfer of a person's abalone diving permit, that former permit-holder may not take, possess, transfer, or control any abalone for commercial purposes unless otherwise permitted by law.

(g) 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 18 Section 8307.2 is added to the Fish and Game Code, to read:

8307.2. (a) Notwithstanding Section 8102, an abalone diving

permit issued pursuant to Section 8306.2 shall be transferred to the estate of a permittee who has died only for the purpose of transferring the abalone diving permit to a person who is qualified.

(b) The abalone diving permit in the estate of a deceased permittee may be transferred to the surviving spouse, or to a natural or adopted child of the permittee, if the spouse or child, at the time of the transfer, holds a commercial fishing license issued pursuant to Section 7850 and that spouse or child has held an abalone crewmember permit in any prior three years or has held an abalone diving permit in any two prior years. The application for the transfer of an abalone diving permit under this subdivision shall be submitted by the administrator of the estate of the deceased permittee to the department together with the proof that the department may reasonably require to establish the qualifications of the spouse or child to whom the permit is to be transferred. The applicant for the transferred permit shall include with the application a transfer processing fee of two hundred fifty dollars ($250).

(c) The abalone diving permit in the estate of a deceased permittee may be transferred to a person who, at the time the application for transfer is submitted, holds a commercial fishing license issued pursuant to Section 7850 if that person has also held an abalone crewmember permit in any prior three years or has held an abalone diving permit in any two prior years. The application for the transfer of an abalone diving permit pursuant to this subdivision shall be submitted by the person to whom the permit is to be transferred to the department together with the proof that the department may reasonably require to establish the qualifications of the person to whom the permit is to be transferred. The applicant shall also submit a notarized copy of the letters of administration of the decedent's estate and a notarized letter from the administrator which includes a statement identifying the person to whom the abalone permit is to be transferred and setting forth the conditions of the transfer. The applicant for the transferred permit shall include with the application a transfer processing fee of two hundred fifty dollars ($250).

(d) Upon determining that the transferee of the abalone diving permit under this section is qualified, the department shall issue an abalone diving permit to the transferee which is valid for the remainder of the then current season. An abalone permit issued pursuant to this subdivision shall be renewed by the department in the next succeeding season notwithstanding the landing requirements of subdivision (a) of Section 8306.2.

(e) After the transfer of the deceased person's abalone diving permit, the estate of the deceased permit-holder may not possess, transport, or control any abalone for commercial purposes unless otherwise permitted by law.

(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. 19. Section 8308 of the Fish and Game Code is amended to read:

8308. (a) It is unlawful for a holder of a commercial abalone diving permit to possess, transport, control, or land more than 180 each of red, green, pink, or black abalone on any day, or for there to be more than 360 total of any one species of abalone on a vessel at any time. This subdivision does not prohibit more than 360 of any one species of abalone to be in possession or controlled by an abalone diving permittee when those abalone are being transported on land south of the county line between the County of San Luis Obispo and the County of Santa Barbara.

(b) Notwithstanding subdivision (a), in District 10, it is unlawful for a holder of a commercial abalone diving permit to possess, transport, or control on a fishing vessel, or to land more than 84 abalone on any day, or for there to be more than 168 total abalone on a vessel at any time.

(c) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of any person convicted of a violation of subdivision (a) or (b) if the court finds that the person possessed more than one and one-half times the number of abalone permitted at the time of the offense. That person shall not, thereafter be eligible for any license or permit to take or possess fish for sport or commercial purposes.

(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. 20. Section 8308 is added to the Fish and Game Code, to read:

8308. (a) It is unlawful for a holder of a permit which authorizes the taking of abalone for commercial purposes to possess, transport, control, or land more than 180 black abalone at any time or for there to be more than 360 black abalone on a vessel. This subdivision does not prohibit more than 180 black abalone to be in possession or controlled by an abalone diving permittee when those abalone are being transported on land.

(b) Notwithstanding subdivision (a), in District 10 it is unlawful for a holder of a commercial abalone diving permit which authorizes the taking of abalone for commercial purposes to possess, transport, or control on a fishing vessel, or to land more than 84 abalone, or for there to be more than 168 total abalone on a vessel at any time.

(c) This section shall become operative on January 1, 1994.

SEC. 21. Section 8310 of the Fish and Game Code is amended to read:

8310. It is unlawful for any person to purchase, receive, possess, or sell any abalone, or parts thereof, which were taken illegally in California waters, or to purchase or sell abalone, or parts thereof, which were taken under the authority of a sportfishing license.

SEC. 22. Section 8311 is added to the Fish and Game Code, to

read:

8311. (a) Notwithstanding Section 12000, and in addition to Section 12009, if any person is convicted of a violation of a regulation permitting the taking of abalone under a sportfishing or sport ocean fishing license issued pursuant to Article 3 (commencing with Section 7145) of Chapter 1 of Part 2, and that person had more than seven times the number of abalone permitted to be possessed under those regulations, that person shall be fined not less than five times the prevailing market value of the abalone.

(b) In addition to the fine, upon a conviction punishable under this section, the court shall order the department to revoke, and the department shall revoke, the person's sportfishing or sport ocean fishing license for one year.

(c) If the court finds that the person convicted of a violation punishable under this section had more than seven times the number of abalone permitted, had more than seven undersized abalone, or had more than seven abalone removed from the shell, or has had his or her fishing privileges revoked pursuant to subdivision (b) for three separate convictions punishable under this section, the court shall order the department to permanently revoke, and the department shall permanently revoke, the person's sportfishing or sport ocean fishing license. A person whose sportfishing privilege is revoked pursuant to this section shall not be eligible for any license or permit, including, but not limited to, a commercial fishing license, to take or possess fish in this state for life.

(d) This section shall remain in effect only until Janury 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. 23. Section 8312 is added to the Fish and Game Code, to read:

8312. Notwithstanding Section 12000, and in addition to Section 12009, if any person who has an abalone diving permit is convicted of a violation of Section 8305 or 8305.5, the offense occurs in an area closed to the taking of abalone for commercial purposes north of Point Lobos in District 10, and the person takes or possesses 36 or more abalone, that person shall be punished by all of the following:

(a) A fine of five times the market value of the abalone taken or in possession, or ten thousand dollars ($10,000), whichever is greater.

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of that person. The person punished under this subdivision shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes, including, but not limited to, a commercial fishing license or a sportfishing or sport ocean fishing license. Notwithstanding any other provision of law, the commercial license or permit of a person arrested for a violation punishable under this section may not be sold, transferred, loaned, leased, or used as security for any financial transaction until disposition of the charges

is final.

(c) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section shall be seized, and shall be ordered forfeited in the same manner prescribed for nets or traps used in violation of this code in Article 3 (commencing with Section 8630) of Chapter 3, or in the manner prescribed in Section 12157.

(d) Not less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Wildlife Protection Division of the department and used for law enforcement purposes.

SEC. 24. Section 8313 is added to the Fish and Game Code, to read:

8313. (a) Any person who is required to pay a landing tax for abalone pursuant to Sections 8041 and 8042 shall pay, in addition to the landing taxes determined pursuant to Section 8051, an additional tax of nineteen and one-half cents ($0.195) for each pound, or fraction thereof, of abalone, determined as provided in Section 8042.

(b) 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. 25. *Section 8314 is added to the Fish and Game Code, to* read:

8314. (a) The landing tax collected pursuant to Section 8313 shall be deposited in the Fish and Game Preservation Fund and shall be used only for the Abalone Resources Restoration and Enhancement Program. The department shall maintain internal accounts necessary to ensure that the funds are disbursed for the purposes in this subdivision. Not more than 15 percent of the landing tax collected pursuant to Section 8313 may be used for administration by the department. Any interest on the revenues from the landing tax collected pursuant to Section 8313 shall be deposited in the fund and used for the purposes in this subdivision.

(b) A commercial Abalone Advisory Committee shall be appointed by the director, consisting of six members who shall serve without compensation or reimbursement of expenses. One of the members shall be a person who is required to pay landing taxes pursuant to Section 8313. Each of the five remaining members shall hold a current commercial abalone diving permit, and represent the following groups and organizations:

(1) One member shall be selected from divers with a place of residence north of Point Sur.

(2) One member shall be selected from divers with a place of residence south of Point Dume.

(3) One member shall be selected from divers with a place of residence south of Point Sur and north of Point Dume.

(4) Two members shall be selected from the membership of the California Abalone Association without regard to place of residence.

This subdivision does not prohibit persons selected pursuant to paragraph (1), (2), or (3) from also being members of the California Abalone Association.

(c) The advisory committee shall make recommendations to the director and the director shall use his or her best efforts to implement those recommendations for activities to be conducted with funds collected pursuant to Section 8313, and only funds collected from the previous calendar year shall be available for use for those activities.

(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. 26. Section 12009 of the Fish and Game Code is amended to read:

12009. Notwithstanding Section 12000 and except as provided in Section 8312, the maximum punishment for a violation of any provision of Article 7 (commencing with Section 8300) of Chapter 2 of Part 3 of Division 6 or any regulation adopted thereunder, or of Section 7121 involving abalone, is a fine of five thousand dollars ($5,000), imprisonment in the county jail for a period not to exceed one year, the revocation of any license issued pursuant to Sections 8032 to 8036, inclusive, or any combination of these penalties.

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 1289

An act relating to state building standards, and making an appropriation therefor.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. The State Building Standards Commission, in conjunction with all agencies involved in the adoption of state building standards and the interested public, shall conduct a comprehensive review of state building standards and statutes relating to state building standards beginning January 1, 1991, and

continuing through December 31, 1992. The review shall determine if the standards and statutes continue to be necessary, if they continue to carry out the goals for which they were established and if they are the most efficient and effective means of meeting their stated goals.

The review shall identify obsolete language and standards which can be deleted from the State Building Standards Code to minimize wherever possible the use of state amendments to the model codes. The commission shall take steps necessary to delete the obsolete language and standards during the review.

The review shall encompass all regulations affecting design and construction, except those contained in Title 25 of the California Code of Regulations. The commission shall take steps necessary to remove the building standards from other sections of the California Code of Regulations upon completion of the review, with the exception of those building standards adopted by the Occupational Safety and Health Standards Board pursuant to subdivision (b) or (c) of Section 142.3 of the Labor Code.

The review shall include an evaluation of the existing regulations and procedures governing public petition for adoption, amendment, or repeal of any building standard or administrative regulation that pertains to building standards. The review shall identify existing procedures which act as barriers to the public's ability to actively exercise the right to petition. The commission shall revise and supplement the regulations governing public petition to ensure that the process is open and responsive to public concerns. The commission shall take steps necessary to adopt the new public petition regulations in conjunction with the 1991 triennial edition of the State Building Standards Code.

It is the intent of the Legislature that this review not be used to change the meaning of any existing statute or regulation relating to handicapped accessibility requirements.

SEC. 2. There is hereby appropriated to the State Building Standards Commission for purposes of this act an amount up to two hundred thousand dollars ($200,000) to be paid equally from the following funds:

(a) The California State Board of Architectural Examiners Fund established and authorized pursuant to Sections 5601 and 5602 of the Business and Professions Code.

(b) The Contractors' License Fund established pursuant to Section 7135 of the Business and Professions Code.

(c) The Professional Engineer's and Land Surveyor's Fund established pursuant to Section 6797 of the Business and Professions Code.

(d) The Hospital Building Account in the Architecture Public Building Fund established pursuant to Section 15047 of the Health and Safety Code.

(e) The School Building Program Account in the Architecture Public Building Fund consisting of those fees credited to the

Architecture Public Building Fund pursuant to Section 39147 of the Education Code.

CHAPTER 1290

An act to add Division 12 (commencing with Section 22000) to the Welfare and Institutions Code, relating to long-term care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990.]

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

SECTION 1. (a) The Legislature finds:

(1) Chronic long-term care illnesses threaten the health and welfare of millions of Californians and their families.

(2) Most Californians have no private or public insurance to help pay the catastrophic expenses of an extended chronic episode requiring home, community, or institutional long-term care.

(3) The costs of care during an extended chronic illness are high and force tens of thousands of Californians annually to spend-down their income and savings of a lifetime and become dependent upon public assistance programs.

(4) The Health and Welfare Agency estimates that public expenditures for long-term care services in California exceed $3 billion this year and will reach $28 billion by 2020 if expenditures increase at a compound rate of 5 percent per year.

(5) The state cannot, under the constitutional spending limit, continue as the insurer of last resort for increasing numbers of middle-income Californians while at the same time meeting its obligations to the poor who have no other means of caring for themselves.

(6) Legislation authorizing California to operate a Medi-Cal long-term care demonstration waiver program is pending before the United States Congress.

(b) The Legislature declares it is in the interest of the people of California that:

(1) Individuals be encouraged to anticipate their potential long-term care needs by purchasing quality private long-term care insurance policies.

(2) The state provide incentives for individuals to purchase insurance that meets state standards by providing lifetime protection against spend-down, thereby giving individuals the security of knowing their long-term care needs will be taken care of without the painful humiliation of impoverishing themselves to pay for long-term care.

(c) It is the intent of the Legislature that the state establish a

private/public long-term care insurance partnership demonstration program in which individuals who purchase private long-term care insurance that meets state standards and who sustain extended episodes of chronic illnesses that exhaust all the benefits of their private insurance be eligible for continued care by the In-home Supportive Services program and the Medi-Cal program on the basis of specific resource eligibility requirements.

SEC. 2. Division 12 (commencing with Section 22000) is added to the Welfare and Institutions Code, to read:

DIVISION 12. CALIFORNIA PARTNERSHIP FOR LONG-TERM CARE

22000. The California Partnership for Long-Term Care Pilot Program is hereby established.

22001. The purpose of the pilot program is to link private long-term care insurance and health care service plan contracts which cover long-term care with the In-Home Supportive Services program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9) and Medi-Cal, and to provide specified in-home supportive services benefits and specified Medi-Cal benefits to the purchasers of certified insurance policies and health care service plan contracts who exhaust the long-term care benefits of these insurance policies and health care service plan contracts.

22002. (a) The State Department of Health Services shall serve as the lead agency in administering this pilot program.

(b) The department shall seek any federal waivers and approvals necessary to accomplish the purposes of this division.

22003. (a) Individuals who participate in the pilot program and have resources above the eligibility levels for receipt of medical assistance under Title XIX of the Social Security Act (Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code) shall be eligible to receive those in-home supportive services benefits specified by the State Department of Social Services, and those Medi-Cal benefits specified by the State Department of Health Services, if, prior to becoming eligible for benefits, they have purchased a long-term care insurance policy or a health care service plan contract covering long-term care that has been certified by the State Department of Health Services pursuant to Section 22005.

(b) Individuals may purchase certified long-term care insurance policies or health care service plan contracts which cover long-term care services in amounts equal to the resources they wish to protect, so long as the amount of insurance purchased exceeds the minimum level set by the program.

(c) The resource protection provided by this division shall be effective only for long-term care policies, and health care service plan contracts which cover long-term care services, that are delivered, issued for delivery, or renewed between July 1, 1991, and

June 30, 1996, inclusive, or before the termination of the pilot program, whichever is sooner.

22004. Notwithstanding other provisions of law, the resources, to the extent described in subdivision (c), of an individual who purchases a certified long-term care insurance policy or health care service plan contract which covers long-term care services shall not be considered by:

(a) The State Department of Health Services in determining:

(1) Medi-Cal eligibility.

(2) The amount of any Medi-Cal payment.

(3) The amount of any subsequent recovery by the state of payments made for medical services.

(b) The State Department of Social Services in determining:

(1) Eligibility for in-home supportive services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Division 9.

(2) The amount of any payment for in-home supportive services.

(c) The resources not to be considered as provided by this section shall be equal to, or in some proportion set by the department that is less than equal to, the amount of long-term care benefit payments made as described in Section 22006.

22005. The department shall only certify long-term care insurance policies and health care service plan contracts which cover long-term care that provide all of the following:

(a) Individual case management by a coordinating entity designated or approved by the department.

(b) The levels and durations of benefits which meet minimum standards set by the department.

(c) Protection against loss of benefits due to inflation.

(d) A record keeping system including an explanation of benefit report on insurance payments or benefits which count toward Medi-Cal resource exclusion.

(e) Approval of the insurance policy by the Department of Insurance as meeting the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, or approval of the health care service plan contract by the Department of Corporations pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code.

(f) Compliance with any other requirements imposed by the department through regulations consistent with the purposes of this division.

22006. The State Department of Health Services, in determining eligibility for Medi-Cal, and the State Department of Social Services, in determining eligibility for in-home supportive services, shall exclude resources up to, or equal to, the amount of benefit payments made by certified long-term care insurance policies or health care

service plan contracts which cover long-term care services to the extent that the benefits paid are for:

(a) Those in-home supportive services benefits specified in regulations by the State Department of Social Services, and those Medi-Cal benefits specified in regulations by the State Department of Health Services pursuant to Section 22009.

(b) Services delivered to insured individuals in a community setting as part of an individual assessment and case management program provided by coordinating entities designated or approved by the departments.

(c) Services the insured individual receives after meeting the disability criteria for eligibility for long-term care benefits established by the departments.

22007. The pilot program shall be designed so that the estimated aggregate state expenditures for long-term care services for individuals participating in the program do not exceed the aggregate expenditures that would be made for these services under the Medi-Cal program in effect prior to the implementation of this pilot program.

22008. Advice and counseling shall be provided to individuals interested in purchasing long-term care insurance or health care service plan contracts which cover long-term care services certified pursuant to this division. This counseling and advice may be provided by the Health Insurance Counseling and Advocacy Program within the Department of Aging, as well as by others.

22008.5. Upon the termination of the pilot program, individuals who participated in the pilot program shall remain eligible for those in-home supportive services benefits and those Medi-Cal benefits provided for by the pilot program for the life of the purchaser, as long as the purchaser maintains his or her insurance policy or health care service plan contract in force.

22009. (a) The State Department of Health Services shall adopt regulations to implement this division, including, but not limited to, regulations which establish:

(1) The population and age groups that are eligible to participate in the pilot program.

(2) The minimum level of long-term care insurance or long-term care coverage included in health care service plan contracts that must be purchased to meet the requirement of subdivision (b) of Section 22003.

(3) The amount and types of services that a long-term care insurance policy or health care service plan contract which includes long-term care services must cover to meet the requirements of Section 22005.

(4) Which coordinating entities are designated or approved to deliver individual assessment and case management services to individuals in a community setting as required by subdivision (b) of Section 22006.

(5) The disability criteria for eligibility for long-term care benefits

as required by subdivision (c) of Section 22006.

(6) The specific eligibility requirements for receipt of the Medi-Cal benefits provided for by the pilot program, and those Medi-Cal benefits for which participants in the pilot program shall be eligible.

(b) The State Department of Social Services shall also adopt regulations to implement this division, including, but not limited to, regulations which establish:

(1) The specific eligibility requirements for in-home supportive services benefits.

(2) Those in-home supportive services benefits for which participants in the pilot program shall be eligible.

(c) The State Department of Health Services and the State Department of Social Services shall also jointly adopt regulations which provide for the following:

(1) Continuation of benefits beyond the termination of the pilot program pursuant to Section 22008.5.

(2) The protection of a participant's resources pursuant to Section 22004, and the ratio of resources to long-term care benefit payments as described in subdivision (c) of Section 22004.

(d) The departments 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 within 210 days of the enactment of this division to implement this division. The adoption of regulations pursuant to this section in order to implement this division 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 within 210 days of the enactment of this division 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.

22010. An executive and legislative advisory task force shall be formed to provide advice and assistance in designing and implementing the California Partnership for Long-Term Care Pilot Program.

(a) The task force shall be composed of representatives, designated by the chief officer or director of their agency or department, of:

(1) The State Department of Health Services.

(2) The State Department of Social Services.

(3) The Department of Aging.

(4) The Department of Insurance.

(5) The Department of Corporations.

(6) The Senate Office of Research.

(7) The Assembly Office of Research.

(b) The task force shall consult with persons knowledgeable of and concerned with long-term care, including, but not limited to:

(1) Consumers.

(2) Health care providers.

(3) Representatives of long-term care insurance companies and administrators of health care service plans which cover long-term care services.

(4) Providers of long-term care.

(5) Private employers.

(6) Academic specialists in long-term care and aging.

(7) Representatives of the public employees' and teachers' retirement systems.

22011. The Director of Health Services shall annually report to the Legislature regarding the progress of the pilot program. The report shall be provided to the Legislature by January 1 of each year, commencing with 1992. The report shall include:

(a) The success in implementing the public and private partnership.

(b) The number and type of insurers and health care service plans with policies or contracts certified by the department.

(c) The number, age, and financial circumstances of participants in the pilot program who have purchased certified long-term care insurance policies and health care service plan contracts which cover long-term care services.

(d) The number of individuals seeking consumer information services and advice from the Department of Aging pursuant to Section 22008.

(e) The number of participants actually receiving long-term care services, or the Medi-Cal and in-home supportive services benefits provided for by the program, and the type of benefits paid under certified policies and health care service plan contracts which cover long-term care that could count toward Medi-Cal resources protection.

(f) Estimates of the impact on present and future Medi-Cal expenditures.

(g) The cost effectiveness of the program.

(h) A recommendation regarding the continuation of the program.

22012. The State Department of Health Services, in conjunction with the State Department of Social Services, the Department of Aging, the Department of Insurance, and the Department of Corporations, shall submit an application for a grant to be used to pay the administrative expenses of implementation of the California Partnership for Long-Term Care. The department shall not implement this division unless a private grant is received to pay the administrative costs of this program.

22013. (a) In implementing this division, the State Department

of Health Services may negotiate contracts, on a nonbid basis, with long-term care insurers, health care service plans, or both, for the provision of coverage for long-term care services that will meet the certification requirements set forth in Section 22005 and the other requirements of this division.

(b) In order to achieve maximum cost savings, the Legislature declares that an expedited process for issuing contracts pursuant to this division is necessary. Therefore, contracts entered into on a nonbid basis pursuant to this section shall be exempt from the requirements of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that necessary benefits are received by eligible needy persons requiring long-term health care at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1291

An act to amend Sections 10193 and 10195 of, to add Sections 10192.05, 10192.1, 10192.2, 10194, 10194.1, 10194.2, 10194.3, 10194.5, 10195.65, 10197, 10197.1, 10197.2, 10197.3, 10197.4, and 10197.6 to, and to repeal Sections 10195.4, 10197.2, 10197.25, and 10197.6 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 10192.05 is added to the Insurance Code, to read:

10192.05. (a) This article applies to all Medicare supplement policies and nonprofit hospital service plan agreements delivered or issued for delivery in California and all certificates delivered in California pursuant to a group master policy agreement issued in any state.

(b) This article shall not apply to a policy of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for a member or former members, or a combination thereof, of the labor organizations.

SEC. 2. Section 10192.1 is added to the Insurance Code, to read:

10192.1. For purposes of this article:

(a) "Applicant" means the person who seeks to contract for insurance benefits or, in the case of a group Medicare supplement policy, the proposed certificate holder.

(b) "Medicare supplement policy" means a group or individual policy of disability insurance or nonprofit hospital service plan agreement which is advertised, marketed, designed primarily, or otherwise purported to provide health care benefits as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of a person eligible for Medicare.

(c) "Insurer" means insurer, nonprofit hospital service plan, or any other entity, within the jurisdiction of the department, which provides Medicare supplement insurance coverage.

SEC. 2.5. Section 10192.2 is added to the Insurance Code, to read:

10192.2. No insurance policy may be advertised, solicited, or issued for delivery in California as a Medicare supplement policy unless the policy contains definitions or terms that conform to the requirements of this section.

(a) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs when insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employers' liability, or similar law, unless prohibited by law.

(b) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than the definition in the Medicare program.

(c) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities, and available services.

(1) A definition of the home or facility shall not be more restrictive than one requiring that it be all of the following:

(A) Operated pursuant to law.

(B) Approved for payment of Medicare benefits or be qualified to receive that approval, if so requested.

(C) Primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician.

(D) Provide continuous 24-hour nursing service by or under the supervision of a registered nurse.

(E) Maintains a daily medical record of each patient.

(2) The definition may exclude.

(A) Any home, facility, or part thereof used primarily for rest.

(B) A home or facility for the aged or for the care of drug addicts or alcoholics.

(C) A home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial, or educational care.

(d) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(1) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital be all of the following:

(A) An institution operated pursuant to law.

(B) Primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charge is made.

(C) Provide 24-hour nursing service by or under the supervision of a registered nurse.

(2) The definition of the term "hospital" may exclude:

(A) Convalescent, rest or nursing facilities.

(B) Facilities primarily affording custodial, educational, or rehabilitory care.

(C) Facilities for the aged, drug addicts, or alcoholics.

(D) Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency for the treatment of members or exmembers of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for the services.

(e) "Medicare" shall be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or words of similar import.

(f) "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

(g) "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

(h) "Nurse" shall be defined as a registered nurse or licensed vocational nurse.

(i) "Physician" shall mean a licensed practitioner of the healing arts practicing within the scope of his or her license, and shall include all practitioners described in Section 10176.

(j) "Sickness" shall not be defined to be more restrictive than the following:

Sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force.

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, employer's liability or similar law.

SEC. 2.7. Section 10193 of the Insurance Code is amended to read:

10193. (a) With regard to Medicare supplement insurance, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder a duty of honesty, and a duty of good faith and fair dealing.

(b) Conduct of an insurer, broker, or agent during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing set forth in subdivision (a).

SEC. 3. Section 10194 is added to the Insurance Code, to read:

10194. No insurance policy or certificate may be advertised, solicited, or issued for delivery in California as Medicare supplement insurance which does not meet the following minimum standards and contain the following minimum benefits. These are minimum standards and benefits and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(a) A Medicare supplement policy or certificate shall not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(b) A Medicare supplement policy or certificate may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors.

(d) A "noncancelable," "guaranteed renewable," or "noncancelable and guaranteed renewable" Medicare supplement policy shall not:

(1) Provide for termination of coverage of a spouse solely because of the occurrence of any event specified for termination of coverage of the insured, other than the nonpayment of premium.

(2) Be canceled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e) (1) Except as authorized by the commissioner, an insurer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(2) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (4), the insurer shall offer certificate holders an individual Medicare supplement policy. The insurer shall offer the certificate holder at least the following choices:

(A) An individual Medicare supplement policy which provides for continuation of the benefits contained in the group policy.

(B) An individual Medicare supplement policy which provides only the benefits as are required to meet the minimum standards.

(3) If membership in a group is terminated, the insurer shall do either of the following:

(A) Offer the certificate holder the conversion opportunities as are described in paragraph (2).

(B) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(4) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g) No Medicare supplement policy may limit coverage exclusively to a single disease or affliction.

SEC. 4. Section 10194.1 is added to the Insurance Code, to read:

10194.1. A Medicare supplement policy shall provide the following minimum benefits:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount.

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days.

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365

days.

(e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations unless replaced in accordance with federal regulations, or already paid for under Part B.

(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible maximum benefit.

(g) Coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

SEC. 5. Section 10194.2 is added to the Insurance Code, to read:

10194.2. (a) No insurance policy or certificate may be advertised, solicited, or issued for delivery in California as Medicare supplement insurance if it limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:

(1) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet.

(2) With the exceptions of Sections 10125, 11512.5, 10123.15, and 10123.16, mental or emotional disorders may be excluded. With the exception of Sections 10123.6 and 10369.12, alcoholism and drug addiction may be excluded.

(3) Illness, treatment, or medical condition arising out of any of the following:

(A) War or act of war, participation in a felony, riot or insurrection, service in the armed forces, or units auxiliary thereto.

(B) Suicide, attempted suicide, or intentionally self-inflicted injury.

(4) Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery incidental to, or following surgery resulting from trauma, infection, or other diseases of the involved part.

(5) Chiropractic care in connection with the detection and correction of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference which is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column.

(6) Treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medi-Cal), workers' compensation or employer's liability law, services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance.

(7) Dental care or treatment.

(8) Eyeglasses, hearing aids, and examination for the prescription or fitting thereof.

(9) Rest cures, custodial care, transportation, and routine physical examinations.

(10) Territorial limitations outside the United States.

However, supplemental policies may not contain, when issued, limitations or exclusions of the type enumerated in paragraph (1), (5), (9), or (10) that are more restrictive than those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(b) No Medicare supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c) The terms "Medicare supplement," "Medigap," and words of similar import shall not be used unless the policy is issued in compliance with this article.

(d) No Medicare supplement insurance policy or certificate in force in California shall contain benefits which duplicate benefits provided by Medicare.

SEC. 6. Section 10194.3 is added to the Insurance Code, to read:

10194.3. (a) If a Medicare supplement policy excludes coverage for any item listed in the statement required by this section, the cover page of the policy or certificate and the cover page of the outline of coverage shall contain the following statement in no less than 12-point upper case type:

SOME EXPENSES THIS POLICY DOES NOT COVER ARE: (indicate excluded coverage).

Custodial care, excess physician charges (above the amount Medicare pays), out-patient drugs, travel outside the United States, dental care or dentures, routine checkups or immunizations, foot care, eyeglasses, hearing aids, or chiropractic care.

Also, the cover page of the policy shall include, at least ¼ inch below that statement, the following statement, in no less than 12-point upper case type:

THERE MAY BE OTHER EXCLUSIONS IN THIS POLICY. PLEASE REFER TO PAGE (indicate page where other exclusions, if any, are described).

(b) Medicare supplement policies shall include a renewal or continuance provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provisions shall be appropriately captioned, and shall appear on the first page of the policy.

(c) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal

which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(d) A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import, shall include a definition of those terms and an explanation of the terms in its accompanying outline of coverage.

(e) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(f) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.

(g) (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any

solicitation.

(h) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time application is made. Except for direct response policies, insurers shall obtain a written acknowledgment of receipt of the outline from the applicant.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.

(3) The cover page of every outline of coverage shall include the following:

(A) The following statement:

Caution: This policy may include coverage that totally or partly duplicates your other Medicare supplement insurance coverage.

(B) A disclosure of the loss ratio for the policy for the preceding year.

(C) The toll-free telephone number of the department which consumers may call for information about the purchase of Medicare supplement insurance: 1-800-233-9045.

(4) The outline of coverage shall be in the form prescribed below:

[COMPANY NAME]
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE
AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

1. Read Your Policy Carefully — This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Medicare Supplement Coverage — Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services that are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare,

and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine [delete if such coverage is provided].

3. A. [For agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

B. [for direct responses:]

[insert company's name] is not connected with Medicare.

4. [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare supplement coverage in the order stated herein. "Nothing" or "no coverage" shall be stated in the middle column if no coverage is provided for the benefit listed. The order of statement shall be:]

DESCRIPTION	THIS POLICY PAYS [If the policy does not provide coverage for a listed benefit, the insurer shall state "no coverage" beside the benefit in the first column]	YOU PAY
I. Minimum Standards		
SERVICE		
PART A		
INPATIENT HOSPITAL		
SERVICES:		
Semi-private room & board		
Miscellaneous hospital services & supplies, such as drugs, X-rays, lab tests, and operating room		
BLOOD		
PART B		
MEDICAL EXPENSE:		
Services of a physician/outpatient services		
Medical supplies other than prescribed drugs		
BLOOD		
MISCELLANEOUS		
Immunosuppressive Drugs		

DESCRIPTION	THIS POLICY PAYS	YOU PAY
II. Additional Benefits		
PART A		
Part A deductible		
Private rooms		
In-hospital private nurses		
Skilled nursing facility care		
PARTS A & B		
Home health services		
PART B		
Part B deductible		
Medical charges in excess of medicare allowable expenses (percentage paid)		
OUT-OF-POCKET MAXIMUM		
PRESCRIPTION DRUGS		
MISCELLANEOUS		
Respite care benefits		
Expenses incurred in foreign country		
OTHER:		
TOTAL PREMIUM	$_____	

In addition to this outline of coverage, [insurance company name] will send an annual notice to you 30 days prior to the effective date of Medicare changes which will describe these changes and the changes in your Medicare supplement coverage.

5. A description of any policy provisions that exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in paragraph 4 above, including the following conspicuous statements:

(a) The chart summarizing Medicare benefits only briefly describes the benefits.

(b) The Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

6. An example showing how the policy would cover a two thousand dollar ($2,000) charge assuming the deductible has been met for a medical procedure which Medicare determines carries a one thousand five hundred dollar ($1,500) customary and reasonable charge. The statement shall be prominently displayed and in type no smaller than any other type on the page.

7. A description of policy provisions respecting renewability or continuation of coverage, including any reservation of the rights to change premium.

8. The amount of premium for this policy.

(i) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare by reasons of age, which is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) shall notify insureds under the policy that it is not a Medicare supplement policy. The notice shall either be printed or attached to the first page of the outline of coverage or, if no outline of coverage is delivered, to the first page of the policy or certificate. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

(j) The commissioner may promulgate regulations to supplement subdivision (i) of the outline of coverage if they are determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not insurance policies to supplement Medicare.

SEC. 6.5. Section 10194.3 is added to the Insurance Code, to read:

10194.3. (a) If a Medicare supplement policy excludes coverage for any item listed in the statement required by this section, the cover page of the policy or certificate and the cover page of the outline of coverage shall contain the following statement in no less than 12-point upper case type:

SOME EXPENSES THIS POLICY DOES NOT COVER ARE: (indicate excluded coverage).

Custodial care, excess physician charges (above the amount Medicare pays), out-patient drugs, travel outside the United States, dental care or dentures, routine checkups or immunizations, foot care, eyeglasses, hearing aids, or chiropractic care.

Also, the cover page of the policy shall include, at least ¼ inch below that statement, the following statement, in no less than 12-point upper case type:

THERE MAY BE OTHER EXCLUSIONS IN THIS POLICY. PLEASE REFER TO PAGE (indicate page where other exclusions, if any, are described).

(b) Medicare supplement policies shall include a renewal or continuance provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provisions shall be appropriately captioned, and shall appear on the first page of the policy.

(c) Except for riders or endorsements by which the insurer

effectuates a request made in writing by the insured, exercises a specially reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(d) A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import, shall include a definition of those terms and an explanation of the terms in its accompanying outline of coverage.

(e) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(f) Insurers issuing disability policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for Medicare by reason of age, shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not the policies, certificates, or contracts are advertised, solicited, or issued as Medicare supplement policies. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.

(g) (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare supplement insurance to a resident of California shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies in a format acceptable to the commissioner.

The notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the policy, and inform each covered person as to when any premium adjustment is to be made due to

changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

(h) (1) Insurers issuing Medicare supplement policies or certificates for delivery in California shall provide an outline of coverage to all applicants at the time of presentation for examination or sale as provided in Section 10605, and in no case later than at the time application is made. Except for direct response policies, insurers shall obtain a written acknowledgment of receipt of the outline from the applicant.

Any advertisement that is not a presentation for examination or sale as defined in subdivision (e) of Section 10601 shall contain a notice in no less than 10-point upper case type that an outline of coverage is available upon request. The insurer or agent that receives any request for an outline of coverage shall provide an outline of coverage to the person making the request within 14 days of receipt of the request.

(2) If an outline of coverage is provided at or before the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.

(3) The cover page of every outline of coverage shall include the following.

(A) The following statement:

Caution: This policy may include coverage that totally or partly duplicates your other Medicare supplement insurance coverage.

(B) A disclosure of the loss ratio for the policy for the preceding year.

(C) The toll-free telephone number of the department which consumers may call for information about the purchase of Medicare supplement insurance: 1-800-233-9045.

(4) The outline of coverage shall be in the form prescribed below:

[COMPANY NAME]
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE
AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

1. Read Your Policy Carefully — This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Medicare Supplement Coverage — Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services that are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine [delete if such coverage is provided].

3. A. [For agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

B. [for direct responses:]

[insert company's name] is not connected with Medicare.

4. [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare supplement coverage in the order stated herein. "Nothing" or "no coverage" shall be stated in the middle column if no coverage is provided for the benefit listed. The order of statement shall be:]

DESCRIPTION	THIS POLICY PAYS [If the policy does not provide coverage for a listed benefit, the insurer shall state "no coverage" beside the benefit in the first column]	YOU PAY
I. Minimum Standards		
SERVICE		
PART A		
INPATIENT HOSPITAL		
SERVICES:		
Semi-private room & board		
Miscellaneous hospital services & supplies, such as drugs, X-rays, lab tests, and operating room		
BLOOD		
PART B		
MEDICAL EXPENSE:		
Services of a physician/outpatient services		
Medical supplies other than prescribed drugs		
BLOOD		
MISCELLANEOUS		
Immunosuppressive Drugs		

DESCRIPTION	THIS POLICY PAYS	YOU PAY
II. Additional Benefits		
PART A		
Part A deductible		
Private rooms		
In-hospital private nurses		
Skilled nursing facility care		
PARTS A & B		
Home health services		
PART B		
Part B deductible		
Medical charges in excess of medicare allowable expenses (percentage paid)		
OUT-OF-POCKET MAXIMUM		
PRESCRIPTION DRUGS		
MISCELLANEOUS		
Respite care benefits		
Expenses incurred in foreign country		
OTHER:		
TOTAL PREMIUM	$_____	

In addition to this outline of coverage, [insurance company name] will send an annual notice to you 30 days prior to the effective date of Medicare changes which will describe these changes and the changes in your Medicare supplement coverage.

5. A description of any policy provisions that exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in paragraph 4 above, including the following conspicuous statements:

(a) The chart summarizing Medicare benefits only briefly describes the benefits.

(b) The Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

6. An example showing how the policy would cover a two thousand dollar ($2,000) charge assuming the deductible has been met for a medical procedure which Medicare determines carries a one thousand five hundred dollar ($1,500) customary and reasonable charge. The statement shall be prominently displayed and in type no smaller than any other type on the page.

7. A description of policy provisions respecting renewability or

continuation of coverage, including any reservation of the rights to change premium.

8. The amount of premium for this policy.

(i) Any disability insurance policy, including a disability income policy, a basic, catastrophic or major medical expense policy, or single premium nonrenewal policy or certificate issued to persons eligible for Medicare by reasons of age, which is not a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) shall notify insureds under the policy that it is not a Medicare supplement policy. The notice shall either be printed or attached to the first page of the outline of coverage or, if no outline of coverage is delivered, to the first page of the policy or certificate. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

(j) The commissioner may promulgate regulations to supplement subdivision (i) of the outline of coverage if they are determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not insurance policies to supplement Medicare.

SEC. 7. Section 10194.5 is added to the Insurance Code, to read:

10194.5. (a) Compliance with this section shall be certified on the Medicare supplement insurance experience reporting form.

(b) Every insurer shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), as follows:

(1) (A) Every insurer and nonprofit hospital service plan offering Medicare supplement coverage in this state shall, as a condition precedent to the commissioner's approval or continued approval of Medicare supplement policies and certificates offered in California, agree to accept and shall accept a notice under Section 1842 (h) (3) (B) of the Social Security Act (42 U.S.C. Sec. 1395u (h) (3) (B)) as a claim form for benefits under those policies or certificates in lieu of any claim form otherwise required, and shall agree to make a payment determination and shall make the determination on the basis of the information contained in or accompanying the notice.

(B) As further conditions precedent to the approval or continued approval of Medicare supplement policies, and certificates, insurers offering Medicare supplement coverage in the state shall do all of the following:

(i) When a notice under Section 1842 (h) (3) (B) of the Social Security Act (42 U.S.C. Sec. 1395u (h) (3) (B)) is received, provide written notice of the payment determination to the participating physician or supplier and assignor, and provide any payment due

directly to the participating physician or supplier involved.

(ii) Provide each policyholder or certificate holder, at the time coverage is initiated, a card listing the policy or certificate name and number and a single mailing address to which notices under Section 1842 (h) (3) (B) (42 U.S.C. Sec. 1395u (h) (3) (B)) respecting coverage are to be sent.

(iii) Pay any user fees established under Section 1842 (h) (3) (B) of the Social Security Act (42 U.S.C. Sec. 1395u (h) (3) (B)).

(iv) Provide the Secretary of Health and Human Services at least annually, a single mailing address to which notices under Section 1842 (h) (3) (B) (42 U.S.C. Sec. 1395u (h) (3) (B)) are to be sent.

(2) (A) Every insurer and nonprofit hospital service plan offering Medicare supplement coverage in this state shall, concurrent with the filing of any other exhibits, as may be required by the commissioner, file a Medicare Supplement Insurance Experience Exhibit. This exhibit shall be in a form prescribed by the National Association of Insurance Commissioners.

(B) As an addition to the Medicare Supplement Insurance Experience Exhibit, every insurer and nonprofit hospital service plan offering Medicare Supplement coverage shall file with the commissioner a list of its Medicare supplement policies or certificates offered or issued and outstanding in this state as of the end of the previous calendar year.

(i) The list shall identify the filing insurer by name and address, shall identify each policy, certificate, or contract by name and form number, and shall differentiate between policies and certificates filed with and approved by the commissioner in years prior to the previous calendar year, and those filed and approved in the previous calendar year

(ii) Policies and certificates which are issued and outstanding in this state, but are no longer offered for sale shall be specifically identified, as shall any policies or certificates which, for any reason, were not filed with and approved by the commissioner

(iii) The list shall include identification of any policy or certificate for which the commissioner's approval was withdrawn within the previous calendar year.

(C) The commissioner shall, on or before the first day of September of each year, provide the Secretary of Health and Human Services with a list containing the information required to be submitted by this section, which identifies each insurer by name and address.

SEC. 8. Section 10195 of the Insurance Code is amended to read:

10195 (a) Medicare supplement policies shall:

(1) Notwithstanding Section 10276, or any other provision of law, provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract at which time the applicant may return the contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no policy or contract had been issued. All

premiums paid and any policy fee paid for the policy shall be fully refunded to the applicant by the insurer in a timely manner.

(A) Each policy or certificate shall have a notice prominently printed in no less than 10-point upper case type, on the cover page of the policy or certificate or attached thereto, and on the cover page of the outline of coverage or attached thereto, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(B) For purposes of this section a timely manner shall be no later than 30 days after the insurer issuing the policy or certificate receives the returned policy or certificate.

(C) If the insurer issuing the policy or certificate fails to refund all premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer received the returned policy or certificate.

(2) Require insurers to explain the relationship of the coverage of their policies to the benefits provided by Medicare.

(3) Comply with the provisions of subdivision (b) of Section 10291.5 and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, regardless of the situs of the contract.

(b) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person or class of persons insured or proposed for coverage under insurance policies or certificates to supplement Medicare.

(c) (1) Medicare supplement policies or certificates shall return to policyholders benefits which have a minimum loss ratio of 60 percent for individual policies and 75 percent for group policies. The loss ratio shall be on the basis of incurred claims experience and earned premiums.

(2) The commissioner shall require that every entity providing Medicare supplement insurance policies or certificates in this state maintain detailed experience data for policies subject to this section and that they make an annual filing with the commissioner disclosing the loss ratio for each policy form or certificate subject to this section. The annual filing shall, at a minimum, include rates, rating schedules, and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration. That information shall demonstrate that each policy form or certificate is in compliance with the applicable loss ratio standards.

(3) The commissioner shall assure that reserves are reasonable and based on sound actuarial principles with respect to the aggregate dollar amount of reserves for claims that are incurred but not yet paid and for claims that are incurred but not yet reported.

(4) Policy forms or certificates shall be deemed to comply with

the purposes of this section if the expected losses in relation to premiums over the entire period for which the policy form is rated comply with the requirements of this section and either of the following applies:

(A) For policies or certificates which have been in force for three years or more, for the most recent year, the ratio of incurred losses to earned premiums is greater than or equal to the minimum loss ratios established by this section.

(B) For policies or certificates which have been in force for less than three years, the expected third-year loss ratio can be demonstrated to be greater than or equal to the minimum loss ratio.

(5) If the annual filing or other information received by the commissioner indicates that the actual loss ratio for a policy or certificate is less than the minimum loss ratio established by the commissioner, the commissioner shall require that the insurer or entity providing the insurance file and implement a corrective plan. This plan shall include the utilization of premium reductions, dividends, benefit increases, or any combination of these or other methods such that the minimum loss ratio can be reasonably expected to be achieved. Any corrective plan shall be reviewed and approved by the commissioner prior to implementation.

(6) If, in the opinion of the commissioner, a policy's or certificate's failure to meet the minimum loss ratio requirement is due to unusual reserve fluctuations, economic conditions, or other nonrecurring conditions, the commissioner may exempt the policy or certificate from the need for a corrective plan for that year. Any exemption shall be in writing and specify the reasons for the granting of the exemption.

(7) If an insurer or other entity providing Medicare supplement insurance in this state fails to file and implement a corrective plan in a timely manner, the commissioner shall withdraw approval of the policy or certificate according to the procedures set forth in Section 10293. This remedy shall be in addition to any remedy available in this section or under other laws of this state. Any report, plan, exemption, or other document prepared pursuant to this subdivision shall be accessible to the public as a public record.

(8) The commissioner may adopt regulations to implement this subdivision.

(d) Upon a Medicare benefit change, every insurer that provides Medicare supplement insurance to a resident of this state shall make premium adjustments necessary to produce an expected loss ratio as will conform to the minimum loss ratio standards for Medicare supplement policies, and that are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer. No premium adjustment that would modify loss ratio experience under the policy, other than the adjustments described in this subdivision, shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(e) As soon as practicable, but prior to the effective date of Medicare benefit changes, every insurer shall file the following with the commissioner:

(1) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies, along with supporting documents necessary to justify the adjustment.

(2) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplication with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the benefits provided by the policy.

(f) The commissioner may prescribe by regulation a standard form, and the contents of, an informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the information brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare by reason of age, but in no event later than the time of policy delivery.

SEC. 8.5. Section 10195.4 of the Insurance Code, as added by Chapter 1496 of the Statutes of 1987, is repealed.

SEC. 9. Section 10195.65 is added to the Insurance Code, to read:

10195.65. Every insurer providing Medicare supplement coverage in California shall provide a copy of any advertisement intended for use in California, to the commissioner for review at least 30 days before dissemination of the advertisement. The advertisement shall comply with all applicable laws of California.

SEC. 10. Section 10197 is added to the Insurance Code, to read:

10197. (a) No insurer, broker, agent, or other person shall cause a policyholder to replace a Medicare supplement insurance policy unnecessarily. Nothing in this section shall be construed to allow an insurer, broker, agent, or other person to cause a policyholder to replace a Medicare supplement insurance policy which will result in a decrease in benefits and an increase in premium.

(b) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement insurance policy or certificate in force, or whether the Medicare supplement policy or certificate is intended to replace any other disability policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing those questions may be used unless the coverage is sold without an agent.

(1) Do you have another Medicare supplement insurance policy

or certificate in force including health care service contract, health maintenance organization contract?

(2) Did you have another Medicare supplement policy or certificate in force during the last 12 months?

(A) If so, with which company?

(B) If that policy lapsed, when did it lapse?

(3) Are you covered by Medi-Cal?

(4) Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

(c) Each agent shall list, on the same form, any other disability insurance policies he or she or his or her agency has sold to the applicant.

(1) This list shall include all disability policies sold which are still in force.

(2) This list shall include all disability policies in the past five years which are no longer in force.

(d) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of disability coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. A direct response insurer shall deliver a notice regarding replacement of disability coverage meeting the requirements of subdivision (f) to the applicant at the time of the issuance of the policy.

(e) The notice required by this section for an insurer, other than a direct response insurer, shall be provided in substantially the following form:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE: IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all disability coverage you now have, and terminate your present policy if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:

[Use additional sheets, as necessary.]

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under a new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate, may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent the time was spent (depleted) under the original policy.

3. If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

_____

(Signature of Agent, Broker, or Other Representative)

_____

(Typed Name and Address of Agent or Broker)

The above "Notice to Applicant" was delivered to me on:

_____

(Date)

_____

(Applicant's Signature)

(f) The notice required for a direct response insurer shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS MEDICARE SUPPLEMENT INSURANCE

[Insurance company's name and address]

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing Medicare supplement insurance and replace it with the policy delivered herewith issued by [Company Name] Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent the time was spent (depleted) under the original policy.

3. If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.]

If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [Company Name and Address] within 30 days if any information is not correct and

complete, or if any past medical history has been left out of the application.

(Company Name)

SEC. 11. Section 10197.1 is added to the Insurance Code, to read:

10197.1. (a) Every insurer marketing Medicare supplement insurance coverage in this state, directly or through its producers, shall do all of the following:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy for purposes of triggering first year commissions as authorized by Section 10197.6.

(4) Display prominently by type, stamp, or other appropriate means on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(5) Inquire and otherwise make every reasonable effort to identify whether a prospective purchaser for Medicare supplement insurance already has insurance and the types and amounts of that insurance.

(6) Establish auditable procedures for verifying compliance with this subdivision.

(b) In addition to other unfair trade practices identified in this code, the following acts and practices are prohibited:

(1) Twisting: Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies of insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High Pressure Tactics: Employing any method of marketing having the affect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold Lead Advertising: Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

SEC. 12. Section 10197.2 of the Insurance Code is repealed.

SEC. 13. Section 10197.2 is added to the Insurance Code, to read:

10197.2. (a) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited; provided, however, that additional Medicare supplement coverage may be sold if, when combined with that individual's health coverage already in force, it would insure no more than 100 percent of the individual's actual medical expenses covered under the combined policies.

SEC. 13.5. Section 10197.25 of the Insurance Code is repealed.

SEC. 14. Section 10197.3 is added to the Insurance Code, to read:

10197.3. (a) On or before March 1, every insurer providing Medicare supplement insurance coverage in California shall report the following information for every individual resident of this state for which the insurer has in force more than one Medicare supplement insurance policy or certificate:

(1) Policy and certificate number.

(2) Date of issuance.

(b) The items set forth above shall be grouped by individual policyholder.

SEC. 15. Section 10197.4 is added to the Insurance Code, to read:

10197.4. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

SEC. 16. Section 10197.6 of the Insurance Code is repealed.

SEC. 17. Section 10197.6 is added to the Insurance Code, to read:

10197.6. (a) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(b) The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period and shall be provided for a reasonable number of renewal years.

(c) No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

(d) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finders fees.

SEC. 17.5. 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. 18. Sections 10192.05 to 10197.6, inclusive, of the Insurance Code, as added by this act, shall be contained in Article 6 of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

SEC. 18.5. Section 6.5 of this bill incorporates amendments to Section 10195 of, and the addition of Section 10194.3 to, the Insurance Code proposed by both this bill and AB 2715. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 10195 of the Insurance Code, and this bill adds Section 10194.3 to the Insurance Code, and (3) this bill is enacted after AB 2715, in which case Section 10194.3 of the Insurance Code, as added by Section 6 of this bill, shall remain operative only until the operative date of AB 2715, at which time Section 6.5 of this bill shall become operative.

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.

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Existing regulations of Medicare supplemental insurance will expire on May 1 of this year, and this legislation is necessary to ensure that in the absence of those regulations, there will be clear requirements with respect to the minimum standards and minimum benefits for that insurance.

CHAPTER 1292

An act relating to education, and making an appropriation therefor, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990]

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

SECTION 1. (a) The sum of one hundred four thousand dollars ($104,000) is hereby appropriated from the General Fund to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for the 1990–91 fiscal year, subject to the condition set forth in subdivision (b), as local assistance for the geography education staff development program (Program 20.60.125).

(b) The allocation of the funds described in subdivision (a) shall be subject to the contribution of private matching funds in an equal amount, in the manner private funding was contributed under that program in the 1988–89 and 1989–90 fiscal years.

CHAPTER 1293

An act to amend Section 1464 of, and to add Section 1464.05 to, the Penal Code, relating to fines and forfeitures.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 1464 of the Penal Code is amended to read:

1464. (a) Subject to Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code, there shall be levied a state penalty in an amount equal to seven dollars ($7) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the state penalties established by this section and Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code for all matters

where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the state penalty shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail is returned, the state penalty made thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the State Penalty Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) Of moneys so deposited, the revenues attributable to the increase in the state penalty from five dollars ($5) to seven dollars ($7), as determined by the Department of Finance, shall be transmitted to the State Treasury to be deposited directly into the Restitution Fund. The remainder shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.38 percent of the funds deposited in the State Penalty Fund during the preceding month, but in no event shall the amount be less than the state penalty levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to 22.12 percent of the funds deposited in the State Penalty Fund during the preceding month. Those funds shall be made available in accordance with subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 27.75 percent of the funds deposited in the State Penalty Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty State Penalty Fund an amount equal to 29.73 percent of the funds deposited in the State Penalty Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 9.12 percent of the funds deposited in the State Penalty Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.90 percent of the funds deposited in the State Penalty Fund during the preceding month. The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars ($850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars ($850,000) shall be transferred to the Restitution Fund.

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 10 percent of the funds deposited in the State Penalty Fund during the preceding month.

(g) (1) Notwithstanding subdivision (f), of moneys so deposited, the revenues attributable to the state penalty provided for in subdivision (i) of Section 27315 of the Vehicle Code shall, on a monthly basis, be transferred to the Traumatic Brain Injury Fund, created pursuant to Section 5564.6 of the Welfare and Institutions Code, until the amount deposited in the Traumatic Brain Injury Fund, as determined by the Department of Finance, for any fiscal year equals five hundred thousand dollars ($500,000). All moneys in excess of that amount shall be utilized in accordance with subdivision (f).

(2) Any moneys deposited in the State Penalty Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with subdivision (f).

SEC. 2. Section 1464 of the Penal Code is amended to read:

1464. (a) Subject to Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code, there shall be levied a state penalty in an amount equal to eight dollars ($8) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and

Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the state penalties established by this section and Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the state penalty shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail is returned, the state penalty made thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the State Penalty Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) Of moneys so deposited, the revenues attributable to the increase in the state penalty from five dollars ($5) to seven dollars ($7), as determined by the Department of Finance, shall be transmitted to the State Treasury to be deposited directly into the Restitution Fund. The revenues attributable to the increase in the assessment from seven dollars ($7) to eight dollars ($8) shall be transmitted to the State Treasury to be deposited directly into the Criminal Identification and Information Fund until July 1, 1994, and thereafter to be deposited into the General Fund, unless continued deposits into the Criminal Identification and Information Fund are authorized by later enacted legislation which is chaptered and becomes operative prior to July 1, 1994, deleting or extending that date. The remainder shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.38 percent of the funds deposited in the State Penalty Fund during the preceding month, but in no event shall the amount be less than the state penalty levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys are to be

used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to 22.12 percent of the funds deposited in the State Penalty Fund during the preceding month. Those funds shall be made available in accordance with subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 27.75 percent of the funds deposited in the State Penalty Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty State Penalty Fund an amount equal to 29.73 percent of the funds deposited in the State Penalty Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 9.12 percent of the funds deposited in the State Penalty Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.90 percent of the funds deposited in the State Penalty Fund during the preceding month. The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars ($850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars ($850,000) shall be transferred to the Restitution Fund.

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 10 percent of the funds deposited in the State Penalty Fund during the preceding month.

(g) (1) Notwithstanding subdivision (f), of moneys so deposited, the revenues attributable to the state penalty provided for in subdivision (i) of Section 27315 of the Vehicle Code shall, on a monthly basis, be transferred to the Traumatic Brain Injury Fund, created pursuant to Section 5564.6 of the Welfare and Institutions Code, until the amount deposited in the Traumatic Brain Injury Fund, as determined by the Department of Finance, for any fiscal year equals five hundred thousand dollars ($500,000). All moneys in excess of that amount shall be utilized in accordance with subdivision (f).

(2) Any moneys deposited in the State Penalty Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with subdivision (f).

SEC. 3. Section 1464.05 is added to the Penal Code, to read:

1464.05. Wherever the word "assessment" appears in any reference to Section 1464 in any law or regulation with regard to a fine, penalty, or bail forfeiture, it shall be deemed to refer to the penalty, state penalty, or additional penalty required by Section 1464.

SEC. 4. Section 2 of this bill incorporates amendments to Section 1464 of the Penal Code proposed by both this bill and AB 3821. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 1464 of the Penal Code, and (3) this bill is enacted after AB 3821, in which case Section 1 of this bill shall not become operative.

CHAPTER 1294

An act to add and repeal Section 13396.5 of the Water Code, relating to water quality, and making an appropriation therefor.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 13396.5 is added to the Water Code, to read:

13396.5. (a) The state board shall establish fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in the contiguous zone or the ocean as defined in Section 502 of the federal Clean Water Act (33 U.S.C. Sec 1362), which shall be collected annually.

(b) The fees shall create incentives to reduce discharges to the ocean, bays, and estuaries and shall be based on the relative threat to water quality from point and nonpoint dischargers. The schedule of fees shall be set at an amount sufficient to fund the responsibilities and duties of the state board, the State Department of Health Services, and the Department of Fish and Game established by this chapter. The total amount of fees collected pursuant to this section shall not exceed four million dollars ($4,000,000) per year. Nothing in this section limits or restricts the funding of activities required by this chapter from sources in addition to the fees established by this section.

(c) Fees collected pursuant to this section shall be deposited in the Bay Protection and Toxic Cleanup Fund which is hereby created, and shall be available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this chapter.

(d) Fees collected pursuant to this section shall be in addition to fees established pursuant to Section 13260 and shall not be subject to the maximum fee established in subdivision (d) of Section 13260, provided that the annual fee under this section shall not exceed the

amount of thirty thousand dollars ($30,000) per discharger.

(e) Any person failing to pay a fee established under this section when so requested by the state board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (d) of Section 13261.

(f) On or before January 1, 1993, the State Board shall report to the Legislature on the progress made toward meeting the requirements of this chapter and the adequacy of the fee levels established in subdivisions (b) and (d).

(g) 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. 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. Moneys appropriated to the State Water Resources Control Board by subdivision (b) of Section 54 of Chapter 269 of the Statutes of 1989 to implement Chapter 5.6 (commencing with Section 13390) of Division 7 of the Water Code shall be available to the State Water Resources Control Board for expenditure to implement the fee system established by Section 13396.5 of the Water Code.

CHAPTER 1295

An act relating to the Los Angeles River floodway, and making an appropriation therefor.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. (a) The State Coastal Conservancy may prepare a regional master plan for development of the Los Angeles River floodway as a park and recreation area. The plan shall consider other studies for compatible joint use of the floodway, and shall, among other things, include technical feasibility studies and estimated costs for achieving the following:

(1) Habitat restoration.

(2) Reforestation.

(3) Bike and running trails.

(4) Improvements that provide maximum air quality benefits.

(b) The conservancy shall consult with all appropriate entities in the preparation of the plan.

(c) If the conservancy authorizes expenditure of funds for the purposes of this act, the conservancy shall submit the plan and the conservancy's administrative and other costs to the Governor and the Legislature by July 1, 1992. It is the intent of the Legislature that the conservancy shall be repaid for these expenditures up to five hundred thousand dollars ($500,000) from any available and appropriate special funding sources, not later than the fiscal year following completion of the regional master plan.

SEC. 2. The Los Angeles County Transportation Commission is in the process of preparing a feasibility study on an alternative use of the Los Angeles River floodway. The Legislature requests the commission, in the preparation of that study, to also consider the feasibility of incorporating a parkway into that use.

SEC. 3. No state funds shall be expended on the study conducted by the Los Angeles County Transportation Commission or to implement the recommendations of the study until the plan authorized under Section 1 of this act is completed and submitted to the Legislature and the Governor.

SEC. 4. The Department of Water Resources and the Department of Fish and Game shall cooperate with the State Coastal Conservancy in the development of the regional master plan authorized under Section 1 of this act, using funds appropriated to them for the purpose of studying the Los Angeles River. Notwithstanding Division 21 (commencing with Section 31000) of the Public Resources Code, the conservancy may allocate from its current appropriations, funds needed to complete the regional master plan.

CHAPTER 1296

An act to amend Sections 22454 and 22454.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 22454 of the Vehicle Code is amended to read:

22454. (a) The driver of any vehicle upon meeting or overtaking from either direction any schoolbus equipped with signs as required in this code, which has stopped for the purpose of receiving or discharging any schoolchildren and displays a flashing red light signal

visible from front and rear, shall bring the vehicle to a stop immediately before passing the schoolbus and shall not proceed past the schoolbus until the red flashing signal ceases operation.

(b) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a schoolbus which is upon the other roadway. The driver of a vehicle need not stop upon meeting or passing a schoolbus when the schoolbus is stopped at an intersection where traffic is controlled by a traffic officer or official traffic control signal, or when the schoolbus is stopped at a place where traffic is controlled by a traffic officer or official traffic control signal.

(c) (1) If a vehicle was observed overtaking a schoolbus in violation of subdivision (a), and the driver of the schoolbus witnessed the violation, the driver may, within 24 hours, report the violation and furnish the vehicle license plate number and description and the time and place of the violation to the local law enforcement agency having jurisdiction of the offense. That law enforcement agency shall issue a letter of warning prepared in accordance with paragraph (2) with respect to the alleged violation to the registered owner of the vehicle. The issuance of a warning letter under this paragraph shall not be entered on the driving record of the person to whom it is issued, but does not preclude the imposition of any other applicable penalty.

(2) The Attorney General shall prepare and furnish to every law enforcement agency in the state a form letter for purposes of paragraph (1), and the law enforcement agency may issue those letters in the exact form prepared by the Attorney General. The Attorney General may charge a fee to any law enforcement agency which requests a copy of the form letter to recover the costs of preparing and providing that copy.

(d) This section also applies to a roadway upon private property.

SEC. 2. Section 22454.5 of the Vehicle Code is amended to read:

22454.5. Notwithstanding Section 42001, a person convicted of a first violation of Section 22454 shall be punished by a fine of not less than one hundred fifty dollars ($150) or more than two hundred fifty dollars ($250). A person convicted of a second separate violation of Section 22454 shall be punished by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000). If a person is convicted of a third or subsequent violation of Section 22454 and the offense occurred within three years of two or more separate violations of Section 22454, the Department of Motor Vehicles shall suspend the person's privilege to operate a motor vehicle for one year.

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 1297

An act to add Sections 52009, 52012.5, 52013.5, 52015.5, and 52020.5 to the Health and Safety Code, relating to housing.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 52009 is added to the Health and Safety Code, to read:

52009. The Legislature finds and declares all of the following:

(a) The ownership and occupancy of a home is a fundamental element in the fabric of the American way of life.

(b) The rapid appreciation in the value of homes in California which has occurred and is accelerating in recent years has made it impossible for many young persons and families who have never owned their own home to obtain the necessary financing to purchase their own home.

(c) Rising costs and resulting inability of first-time homebuyers to purchase their first home is inimical to the welfare of a substantial segment of the population and, with few exceptions, beyond the capability of private enterprise acting alone to cure, and a public purpose is served by facilitating the entry into the housing market of first-time homebuyers who would be unable to finance the purchase of their first home without the kind of financial assistance provided by this part.

(d) Authorization for the making of home mortgages to first-time homebuyers by cities and counties under this part will enable many persons and families who are otherwise unable to do so to take out a loan for the purpose of becoming a homeowner for the first time.

SEC. 2. Section 52012.5 is added to the Health and Safety Code, to read:

52012.5. For purposes of this chapter, "first-time homebuyer" means a person who is a purchaser of an owner-occupied housing unit and who neither has, nor has had, a present ownership in a principal residence at any time during the three-year period prior to the date on which the mortgage governed by this chapter is executed.

Criteria established pursuant to subdivision (c) of Section 52020.5

shall include criteria for qualification of first-time homebuyers which need not include the criteria required for qualification of other mortgagors as set forth in subdivision (d) of Section 52020.5.

SEC. 3. Section 52013.5 is added to the Health and Safety Code, to read:

52013.5. (a) "Home mortgage" or "mortgage" means an interest-bearing loan made as provided in this part to a mortgagor, whether originated in the manner provided in subdivision (a) or (b) of Section 52020.5, which is evidenced by a promissory note and secured by a mortgage, deed of trust, or other security instrument on a home, and which may, but is not required to be, additionally secured by insurance on the payment of that note, for the purpose of purchasing, constructing, or improving a home which meets either of the following criteria:

(1) Is newly constructed or is being rehabilitated and which, in either case, is located within an area or neighborhood in which the City of Gardena is conducting a housing rehabilitation or code enforcement program; a neighborhood preservation area or concentrated rehabilitation area designated pursuant to this division; an area for which federal funds are being made available; a renewal area as defined in Section 33702; or a residential rehabilitation area as defined in Section 37912; provided, however, that a loan may be made for the purchase of a newly constructed home anywhere within the City of Gardena if the purchase is in connection with a program adopted by ordinance of the City of Gardena the purpose of which is to increase the housing supply.

(2) Is a home upon which no rehabilitation is being undertaken in connection with any financing pursuant to this part, where the purchaser will not be the first occupant and which is located within the City of Gardena.

(b) "Home mortgage" or "mortgage" includes a loan made as provided in this part to a first-time homebuyer, as defined in Section 52012.5, which provides for the following terms:

(1) The purchaser shall make an initial payment of at least 5 percent of the selling price of the property.

(2) The balance of the purchase price may be amortized over a period fixed by the City of Gardena not exceeding 50 years, together with interest thereon at the rate as determined by the City of Gardena for amortization purposes.

(3) The City of Gardena may, in order to allow the buyer to purchase the home selected without incurring excessive monthly payments, at the time of initial purchase, postpone the commencement of any portion of the payments for not to exceed five years. In accordance with previously established criteria for these determinations, that the buyer's income can reasonably be expected to increase sufficiently within the five-year period to make the transition to fully amortized principal and interest payments.

(4) The total term of the contract of purchase shall not exceed 40 years. The purchaser on any installment date may pay any or all

installments still remaining unpaid.

(5) In any individual case the City of Gardena may for good cause postpone from time to time as the City of Gardena deems proper, the payment of the whole or any part of any installment of the purchase price or interest thereon.

(c) A "home mortgage" or "mortgage" shall not include a loan to a mortgagor for the purpose of refinancing an existing obligation of the mortgagor, unless substantial rehabilitation is to be undertaken in connection with that loan.

SEC. 4. Section 52015.5 is added to the Health and Safety Code, to read:

52015.5. "Mortgagor" means a person or persons who have received a home mortgage on a home and who are deemed by the City of Gardena under this part to be either a person or family of low or moderate income or a first-time homebuyer, who is unable to pay the amounts at which unassisted private enterprise is providing suitable, decent, safe, and sanitary housing.

SEC. 5. Section 52020.5 is added to the Health and Safety Code, to read:

52020.5. (a) For purposes of a home financing program authorized by this part, the City of Gardena has the following powers and duties:

(1) To acquire, contract, and enter into advance commitments to acquire, home mortgages made or owned by lending institutions at the purchase prices and upon the other terms and conditions as shall be determined by the City of Gardena or other person as it may designate as its agent, to make and execute contracts with lending institutions for the origination and servicing of home mortgages and to pay the reasonable value of services rendered under those contracts. Prior to executing any contract with a lending institution, the City of Gardena shall adopt regulations establishing criteria for qualification of lending institutions eligible to originate and service home mortgages under home financing programs authorized by this part and shall, with respect to each home financing program, permit each qualified lending institution which transacts business in the City of Gardena the opportunity to participate in the program on an equitable basis with other participating lending institutions.

(2) To make loans to lending institutions under terms and conditions which, in addition to other provisions as determined by the City of Gardena, require the lending institutions to use all of the net proceeds thereof, directly or indirectly, for the making of home mortgages in an aggregate principal amount equal to the amount of the net proceeds.

(3) To establish, by rules or regulations, in resolutions relating to any issuance of bonds or in any documents relating to the issuance, standards and requirements applicable to the purchase of home mortgages or the making of loans to lending institutions as the City of Gardena deems necessary or desirable to effectuate the purposes of this part, which may include without limitation any of the

following:

(A) The time within which lending institutions are required to make commitments and disbursements for home mortgages.

(B) The location and other characteristics of homes to be financed by home mortgages.

(C) The terms and conditions of home mortgages to be acquired.

(D) The amounts and types of any insurance coverage required on homes, home mortgages and bonds.

(E) The representations and warranties of lending institutions confirming compliance with the standards and requirements.

(F) Restrictions as to interest rate and other terms of home mortgages or the return realized therefrom by lending institutions.

(G) The type and amount of collateral security to be provided to assure repayment of any loans from the City of Gardena and to assure repayment of bonds.

(H) Any other matters related to the purchase of home mortgages or the making of loans to lending institutions as deemed relevant by the City of Gardena.

(4) To require from each lending institution from which home mortgages are purchased or to which loans are made the submission of evidence satisfactory to the City of Gardena of the ability and intention of the lending institution to make home mortgages, and the submission, within the time specified by the City of Gardena for making disbursements for home mortgages, of evidence satisfactory to the City of Gardena of the making of home mortgages and of compliance with any standards and requirements established by it.

(b) The City of Gardena shall designate a person or entity to administer the program.

(c) The City of Gardena shall adopt regulations establishing criteria for qualifications of persons and families. In developing this criteria, factors similar to the following shall be taken into consideration:

(1) The amount of the income of the person or family that is available for housing needs.

(2) The size of the household.

(3) The costs and condition of available housing.

(4) The eligibility of the persons or families for federal housing assistance of any type.

(5) That first-time homebuyers eligible to be assisted under this section be California residents whose annual gross income does not exceed 35 percent of the median area purchase price of a resale house as determined by the City of Gardena.

(6) The purchase price of homes eligible to be assisted does not exceed 100 percent of the median area purchase price of resale homes.

(d) Criteria for qualification of persons and families pursuant to this section shall include a maximum household income, which maximum shall not exceed the following:

(1) One hundred twenty percent of the median household

income for mortgages made for improving a home or for homes where the purchaser will be the first occupant. Upon the resale of a home for which financing was originally provided under this paragraph, the maximum income of persons and families shall also be 120 percent of the median household income.

(2) The median household income where the purchaser will not be the first occupant. However, the City of Gardena shall ensure that no less than 50 percent of the funds allocated for home mortgages where the purchaser will not be the first occupant shall be for households whose income does not exceed 80 percent of that median household income. However, the legislative body of the City of Gardena may, by resolution, increase this income limitation to 90 percent of median household income if the legislative body finds that there are insufficient numbers of creditworthy persons whose income does not exceed 80 percent of median household income. The resolution is final and conclusive as to the findings required by this paragraph.

(3) One hundred fifty percent of the median household income for mortgages made for improving a home or for homes where the purchaser will be the first occupant in the City of Gardena if that city designated by the United States Department of Commerce, Economic Development Administration as a special impact area within a Title IV redevelopment area, pursuant to Section 401 of the federal Public Works and Economic Development Act of 1965, as amended, and which is eligible for Urban Development Action Grant funds under the current distress standards established for cities by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 119 of the Housing and Community Development Act of 1974, if the homes purchased or improved are situated within the boundaries of a special impact area as defined by the Economic Development Administration, and that designation is in effect on the date of sale of revenue bonds issued under this part.

As used in this subdivision, "median household income" means the highest of (A) statewide median household income, (B) countywide median household income, or (C) median family income for area as determined by the United States Department of Housing and Urban Development, with respect to either a standard metropolitan statistical area or an area outside of a standard metropolitan statistical area.

(e) Subdivision (d) shall not apply with respect to home finance programs funded with amounts made available by the issuance of revenue bonds that (1) for federal tax law purposes are bonds refunding qualified mortgage bonds issued before January 1, 1987, and (2) satisfy the requirements of subdivision (a) of Section 1313 of the federal Tax Reform Act of 1986. With respect to these programs, the maximum household income for qualification of persons and families pursuant to this section shall be the following:

(1) One hundred fifty percent of the median household income

for mortgages made for improving a home or for homes where the purchaser will be the first occupant. Upon the resale of a home for which financing was originally provided under this paragraph, the maximum income of persons and families shall also be 150 percent of the median household income. For purposes of this paragraph, a mortgage made for improving a home includes a home improvement loan as defined in Section 143 of Title 26 of the United States Code.

(2) One hundred twenty percent of the median household income where the purchaser will not be the first occupant. However, the City of Gardena shall ensure that no less than 20 percent of the funds allocated for home mortgages where the purchaser will not be the first occupant shall be for households whose income does not exceed 110 percent of that median household income. However, the legislative body of the city or county may, by resolution, increase this income limitation to 120 percent of the median household income if the legislative body finds that there are insufficient numbers of creditworthy persons whose income does not exceed 110 percent of the median household income. The resolution is final and conclusive as to the findings required by this paragraph. However, the finding shall not be made by the legislative body before six months from the date mortgages were first made under the program and only if participating lenders have entered into an agreement with the City of Gardena that lenders will advertise at least monthly the availability of funds and will forfeit one-quarter of their origination fees if they are unable to use 20 percent of the funds to make mortgages to households whose income does not exceed 110 percent of the median income.

(3) One hundred fifty percent of the median household income for mortgages made for improving a home or for homes where the purchaser will be the first occupant in the City of Gardena if that city is designated by the United States Department of Commerce, Economic Development Administration as a special impact area within a Title IV redevelopment area, pursuant to Section 401 of the federal Public Works and Economic Development Act of 1965, as amended, and which is eligible for Urban Development Action Grant funds under the current distress standards established for cities by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 119 of the Housing and Community Development Act of 1974, if the homes purchased or improved are situated within the boundaries of a special impact area as defined by the Economic Development Administration, and that designation is in effect on the date of sale of revenue bonds issued under this part.

As used in this subdivision, "median household income" means the highest of (1) statewide median household income, (2) countywide median household income, or (3) median family income for the area as determined by the United States Department of Housing and Urban Development, with respect to either a standard metropolitan

statistical area or an area outside of a standard metropolitan statistical area.

(f) (1) Except as otherwise provided in paragraphs (2) and (3), the City of Gardena shall allocate no less than 60 percent of the dollar amount of its financing from bond proceeds to fund loans for the purchase of homes where the purchaser will be the first occupant, or for substantial rehabilitation. As used in this chapter, "substantial rehabilitation" means rehabilitation in which the costs of rehabilitation equal or exceed 20 percent of the value of the structure after rehabilitation.

(2) Paragraph (1) does not apply to an issue of bonds for which all of the proceeds of the bond issuance are allocated to fund loans for home improvement or substantial rehabilitation.

(3) Paragraph (1) shall not apply to that portion of the proceeds of any bonds issued to finance home mortgages for first-time homebuyers.

(g) The City of Gardena shall require each mortgagor under the program to certify his or her intention to occupy the home for a minimum of two years after receiving a home mortgage, with appropriate exceptions in hardship cases determined by the City of Gardena.

(h) The City of Gardena may do any and all things necessary to carry out the purposes and exercise the powers expressly granted by this part.

SEC. 6. Due to unique facts and circumstances applicable to the City of Gardena, the Legislature finds and declares that a general statute cannot be make applicable within the meaning of Section 16 of Article IV of the California Constitution. Special legislation is therefore, necessary and applicable to only the City of Gardena.

CHAPTER 1298

An act to repeal and add Section 9390.1 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 9390.1 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 9390.1 is added to the Welfare and Institutions Code, to read:

9390.1. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise:

(a) "Community-based resources" include, but are not limited to, all of the following:

(1) Adult day health care.
(2) Case management services.
(3) Congregate housing for elderly and functionally impaired adults.
(4) Home delivered meals.
(5) Home modifications.
(6) Home health and independent living training programs.
(7) Hospice services.
(8) Housing assistance.
(9) In-home supportive services.
(10) Information and referral services.
(11) Inpatient and outpatient medical rehabilitation programs.
(12) Multipurpose senior services programs.
(13) Nutrition programs.
(14) Ombudsman services.
(15) Respite care.
(16) Senior companion programs.
(17) Special circumstances.
(18) Special transportation services.

(b) "Department" means the Department of Aging.

(c) "Director" means the Director of the Department of Aging.

(d) "Functionally impaired adult" means any adult 18 years of age or older, who is at risk of institutional placement due to chronic physical and mental limitations which restrict him or her to independently perform personal and instrumental activities of daily living and who has an inadequate informal or formal support network, and would have to leave his or her home in the absence of congregate housing services.

(e) (1) "Long-term care" means a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social, and personal needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and psychological independence in the least restrictive environment, and emphasis shall be placed on seeking alternative services other than institutionalization. Services may be provided by formal or informal support systems and may be continuous or intermittent.

(2) "Long-term care" includes licensed residential care in a community care facility or residential facility for the elderly.

(f) "Postadmission screening" means personal assessment of an individual placed in a nursing facility, to assist in determining the appropriate length of stay in the facility and the individual's ability to return to the community, based upon the level of community-based services available to the individual and referral to those services.

(g) "Preadmission screening" means personal assessment of an applicant for placement in a nursing facility, prior to admission, to

determine the individual's ability to remain in the community with the support of community-based services and referral to those services.

(h) "Provider" means the individual or agency that provides respite care service for the family.

(i) "Respite care" means temporary or periodic services for frail elderly or functionally impaired persons to relieve persons who are providing care.

CHAPTER 1299

An act to add Chapter 5 (commencing with Section 11759.10) to Part 1 of Division 10.5 of the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Chapter 5 (commencing with Section 11759.10) is added to Part 1 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 5. EMPLOYEE ASSISTANCE CONSORTIUM DEMONSTRATION PROGRAM

11759.10. The Legislature finds and declares all of the following:

(a) It is estimated that 20 percent of employed Californians are experiencing problems with alcohol and drugs or other related family concerns. Most working people experiencing these problems are still at some stage of performing daily responsibilities and attempt to function at some level in their workplace.

(b) Work, itself and its possible loss, is a prime motivating force in helping a chemically dependent person seek assistance while he or she still has the support of job and family.

(c) The constructive confrontation process which focuses on deteriorating job performance is a valuable workplace strategy in motivating the chemically dependent person to pursue rehabilitation.

(d) Employer statistics indicate that occupational programs have had considerable success in both intervention and rehabilitation. Some industrial programs have reported statistics as high as 85 percent success in returning impaired employees to acceptable job performance. While cost-effectiveness figures vary, employers generally find that for every dollar they invest in an employee assistance program, they save from five dollars ($5) to sixteen dollars ($16).

(e) Although larger corporations and unions have established examples of successful employee assistance program models, only 20 percent of the workforce has access to programs through their employer or union. Smaller businesses have been unable to participate in employee assistance program services due to the costs associated with program development and implementation. In addition, most employee assistance program providers have not marketed their services to smaller employers.

(f) Most of California's drug or alcohol impaired workers are in "hard-to-reach" work environments. Smaller employers who have workers with substance abuse and other problems typically do not have access to traditional management-personnel support to identify and refer their employees to rehabilitation services. Additionally, these employers have little or no regular health benefits and, as a result, many of the state's working poor are in this category.

11759.11. It is the intent of the Legislature that nothing in this chapter authorize employee assistance programs or their personnel to provide diagnostic or treatment services beyond the scope of the core activities described in Section 11759.12, unless the services are provided by health care organizations or health care professionals duly licensed to do so, or entities specifically exempted by state law or regulation from licensure.

11759.12. As used in this chapter:

(a) "Consortium" means a not-for-profit corporation as set forth in Section 501 (c) (3) of the Internal Revenue Code (26 U.S.C. Sec. 501 (c) (3)), formed by two or more small businesses for the purpose of receiving demonstration project grant funds pursuant to this chapter.

(b) "Small business" means an employer with less than 100 employees.

(c) "Council" means the Employee Assistance Advisory Council.

(d) "Department" means the State Department of Alcohol and Drug Programs.

(e) "Employee assistance program" for purposes of this demonstration project only, means a worksite-focused program designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns, including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress, or other personal concerns which may adversely affect employee job performance.

The specific core activities of an employee assistance program includes at least both of the following:

(1) Expert consultation and training to appropriate persons in the identification and resolution of job-performance issues related to the listed employee personal concerns.

(2) Confidential, appropriate, and timely problem-assessment services; referrals for appropriate diagnosis, treatment, and assistance; establishing linkages between workplace and community resources that provide such services; and followup services for

employees who use those services.

(f) "Program" means the Employee Assistance Consortium Demonstration Program.

11759.15. (a) The Employee Assistance Advisory Council is hereby established in the department. The council shall consist of 12 members, appointed by the director according to the following qualifications:

(1) Demonstrated knowledge and expertise regarding the development, structure, and operation of employee assistance programs.

(2) Documented practical experience in developing and administering employee assistance programs.

(3) Knowledge of, or experience in, working with small business productivity issues.

(b) The council shall be composed of:

(1) A representative of labor organizations.

(2) A representative of management organizations.

(3) A representative of the department.

(4) A representative of the Department of Industrial Relations.

(5) A representative of the State Department of Mental Health.

(6) A representative of the State Chamber of Commerce.

(7) A representative from the Office of Small Business Administration.

(8) Three representatives of employee assistance programs, one of which shall be from a health care service plan licensed pursuant to the Knox-Keene Health Care Services Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2) that specializes in employee assistance programs.

(9) A licensed psychiatrist.

(10) A representative of small business organizations.

(c) The council, with the assistance of the department, shall review and approve all applications from consortiums for program funding. The council shall develop all of the following:

(1) Eligibility guidelines which do all of the following:

(A) Place the highest priority on the applicant's ability to clearly and concisely describe the proposed project's targeted work organizations and employee groups, and explain why the needs of these groups cannot be met through existing means.

(B) Establish criteria to ensure that the consortiums funded have adequate referral resources to meet the diagnostic and treatment needs of employees in need of those services.

(C) Specify that priority funding shall be given to consortiums that will continue to provide at least the same level of mental health and health benefit coverage for their employees as had been provided prior to the application for funds pursuant to this chapter.

(2) Program standards that establish employee assistance procedures which are not in conflict with program standards established by the National Institute on Drugs and Alcohol or the Employee Assistance Professionals Association, or both, for

implementing and managing employee assistance programs.

(3) Methods to provide program accountability, including, but not limited to, demonstration of ability to achieve financial self-sufficiency, measurement of ability to effectively reach the indicated underserved population, and onsite inspections to estimate the potential success for the program.

(d) Members of the council shall receive no compensation for their services, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.

11759.17. (a) There is hereby created in the department the Employee Assistance Consortium Demonstration Program, to provide a public-private partnership where the state will provide financial and technical assistance resources to consortiums to promote and facilitate the establishment of employee assistance programs designed to serve the small business members of the consortium.

The goal of the program is to achieve and maintain a drug-free workplace by pooling resources of smaller employers to provide employee assistance program services, including, but not limited to, problem assessment and referral, management consultation and training, case management services, program promotion, and education.

(b) The program shall provide resources to a consortium for only two years. The first year funding shall not exceed 70 percent of the total program cost or sixty thousand dollars ($60,000), whichever is less. The second year funding shall not exceed 30 percent of the total program cost or twenty-six thousand dollars ($26,000), whichever is less.

(c) No funds appropriated to the department for the purposes of this chapter shall be used by the department to conduct employee assistance programs or to provide employee assistance program services, capital construction, to replace existing public or private funding available for the purposes of this chapter, or to continue already existing employee assistance program services.

(d) No individual or entity involved in the application for grant funds or that receives a financial benefit from the grant funds made available pursuant to this chapter may be employed by or contract with the consortium to select, provide, or evaluate employee assistance program services. Further, individuals or entities involved in the application for grant funds or who receive a financial benefit from the grant funds made available pursuant to this chapter may not have a direct or indirect financial interest in an individual or entity who contracts with the consortium for the selection, provision, or evaluation of the services.

(e) No more than 10 percent of any funds made available to the department for the purposes of this chapter shall be expended for the administrative costs of the department under this chapter.

(f) On or before January 1, 1993, the department, with the assistance of the council, shall report to the Legislature on the

effectiveness of the Employee Assistance Consortium Demonstration Program. The department and the council shall deem the demonstration program to be successful if all of the following conditions are met:

(1) The demonstration program enabled at least 70 small businesses to initiate the provision of employee assistance services for their previously unserved employees.

(2) The demonstration program enabled at least 3,500 small business employees to receive employee assistance services.

(3) The demonstration program enabled the small businesses in the consortium to increase worker productivity through the provision of employee assistance services.

SEC. 2. To the extent permitted by federal law, the sum of two hundred thousand dollars ($200,000) of the unobligated federal funds appropriated to the State Department of Alcohol and Drug Programs shall be available for the purposes of this act.

CHAPTER 1300

An act to amend Section 856 of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 856 of the Insurance Code is amended to read:

856. (a) The commissioner may at any time give or make public any information concerning any insurer, if in the commissioner's judgment, the giving or publishing of the information will be of public interest.

(b) The commissioner may at any time give or make public any information concerning securities purchased or sold within this state by an insurer, if in the commissioner's judgment, the giving or publishing of the information is in the public interest or it will tend to prevent the fraudulent purchase or sale of the securities.

CHAPTER 1301

An act to add Section 42002.5 to the Public Resources Code, relating to solid waste.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 42002.5 is added to the Public Resources Code, to read:

42002.5. In developing recommendations regarding product durability standards pursuant to subdivision (b) of Section 42002, the committee may consider, but shall not be limited to, the following factors:

(a) The extent to which manufactured goods now disposed of in disposal sites can be categorized according to usable life.

(b) The establishment, by specification, of categories of usable life of classes of manufactured goods that are normally disposed of in a disposal site.

(c) The potential for recyclability of various categories of manufactured goods, and the incremental cost imposed on consumers for disposal of single-use manufactured goods.

(d) The extent to which the imposition of a fee, to be determined by the committee, on nondurable and single-use manufactured goods, would encourage the recycling of these goods.

Nothing in this section limits the authority of the California Integrated Waste Management Board pursuant to Section 40600 of the Public Resources Code.

CHAPTER 1302

An act to amend Sections 22503, 87009, 87010, 87011, 87014, 87035, 87036, 87060, 87061, 87062, 87100, 87101, 87103, 87356, 87357, 87400, 87405, 87406, 87408, 87408.6, 87410, 87414, 87415, 87416, 87417, 87419.1, 87420, 87421, 87422, 87428, 87449, 87454, 87458, 87459, 87460, 87461, 87462, 87463, 87464, 87470, 87471, 87474, 87475, 87477, 87478, 87480, 87481, 87482, 87483, 87485, 87486, 87487, 87488, 87600, 87620, 87622, 87660, 87661, 87662, 87663, 87664, 87670, 87700, 87701, 87708, 87714, 87731, 87732, 87733, 87735, 87736, 87737, 87763, 87764, 87765, 87766, 87767, 87768, 87768.5, 87773, 87775, 87776, 87779, 87780, 87781, 87781.5, 87782, 87783, 87785, 87786, 87787, 87788, 87789, 87801, 87802, 87806, 87807, 87809, 87810, 87815, 87816, 87817, 87818, 87821, 87822, 87828, 87831, 87832, 87833, 87834, 88000, 88003, 88004, 88005, 88009, 88013, 88018, 88024, 88061, 88063.5, 88065, 88076, 88090, 88099, 88100, 88101, 88137, 88138, 88160, 88162, 88163, 88199, 88202, 88203, 88241, 88243, 88244, 88245, 88247, and 88261 of, to amend the headings of Article

3 (commencing with Section 87060) of Chapter 1 of, Article 2 (commencing with Section 87600), Article 3 (commencing with Section 87620), Article 4 (commencing with Section 87660), Article 5 (commencing with Section 87700), Article 6 (commencing with Section 87730), and Article 7 (commencing with Section 87760) of Chapter 3, of Part 51 of, to amend and repeal Sections 87472 and 87741 of, to add Sections 87013, 87203, 87351, and 87458.1 to, to add and repeal Section 87612.5 of, to repeal Sections 87004, 87005, 87006, 87007, 87064, 87067, 87401, 87402, 87409, 87412, 87432, 87438, 87440, 87441, 87442, 87443, 87444, 87445, 87446, 87447, 87476, 87623, 87624, 87625, 87684, 87742, 87760, 87761, 87803, 87808, 87820, and 88246 and to repeal and add Sections 87001, 87001.5, 87002, 87003, and 87012 of, the Education Code, relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 22503 of the Education Code is amended to read:

22503. All other employees in the public schools of this state who hold valid and unrevoked credentials issued by the State Board of Education, the Commission on Teacher Credentialing, or the Board of Governors of the California Community Colleges, or who are employed in community college districts pursuant to minimum standards adopted by the Board of Governors of the California Community Colleges, and who are employed for at least 50 percent of each school month in work authorized by their credentials, or pursuant to minimum standards, are members of the system.

SEC. 1.5. Section 87001 of the Education Code is repealed.

SEC. 2. Section 87001 is added to the Education Code, to read:

87001. (a) Academic employee" refers to a person employed by a community college district in an academic position.

(b) "Academic position" includes every type of service, excluding paraprofessional service, for which minimum qualifications have been established by the board of governors pursuant to Section 87356.

(c) Wherever in this code or any other code, the term "certificated employee" or any similar term is used in reference to community college employees, it shall be deemed a reference to academic employees of the community colleges.

(d) Wherever in this code or any other code, the phrase "position requiring certification qualifications," or any similar phrase is used in reference to positions in the community colleges, it shall be deemed a reference to academic positions in the community colleges. Nothing in this part shall be construed as repealing or

negating any provisions in this code or any other code concerning employees of community college districts for purposes of retirement benefits under the State Teachers' Retirement System by referring to those employees as academic employees.

SEC. 3. Section 87001.5 of the Education Code is repealed.

SEC. 4. Section 87001.5 is added to the Education Code, to read:

87001.5. (a) "Classified position" includes every position that is a part of the classified service as defined in Sections 88003 and 88076.

(b) "Classified employee" refers to a person employed by a community college district in a classified position.

SEC. 5. Section 87002 of the Education Code is repealed.

SEC. 6. Section 87002 is added to the Education Code, to read:

87002. (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) "Educational administrator" means an administrator who is employed in an academic 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. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Classified administrator" means an administrator who is not employed as an educational administrator.

SEC. 7. Section 87003 of the Education Code is repealed.

SEC. 8. Section 87003 is added to the Education Code, to read:

87003. (a) "Faculty" or "faculty member" means those employees of a community college district who are employed in academic positions that are not designated 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 service have been established by the board of governors adopted pursuant to subdivisions (a), (b), (c), and (d) 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 community college certification qualifications.

(b) Any employees who are employed in faculty positions but who perform supervisory, management, or other duties related to college governance shall not, because of the performance of those incidental duties, be deemed supervisors or managers, as those terms are defined in Section 3530.1 of the Government Code. The incidental "supervisory" or "management" duties referred to in this

subdivision include, but are not limited to, serving as a faculty member on hiring, selection, promotion, evaluation, budget development, or affirmative action committees, or making effective recommendations in connection with those activities.

SEC. 9. Section 87004 of the Education Code is repealed.

SEC. 10. Section 87005 of the Education Code is repealed.

SEC. 11. Section 87006 of the Education Code is repealed.

SEC. 12. Section 87007 of the Education Code is repealed.

SEC. 13. Section 87009 of the Education Code is amended to read:

87009. A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury is deemed to be a conviction within the meaning of Sections 87405 and 88022 of this code, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of the conviction of a sex offense as defined in Section 87010 or of a controlled substance offense defined in Section 87011 shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 87667 and 87732 relating to the dismissal of permanent employees.

SEC. 14. Section 87010 of the Education Code is amended to read:

87010. "Sex offense," as used in Sections 87405, 88022, and 88123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, 647.6, or former Section 647a, subdivision 2 or 3 of Section 261, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if the offense was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

SEC. 15. Section 87011 of the Education Code is amended to read:

87011. "Controlled substance offense" as used in Sections 87405, 88022, and 88123 means any one or more of the following offenses:

(a) Any offense in Sections 11350 to 11355, inclusive, 11366, 11368, 11377 to 11382, inclusive, and 11550 of the Health and Safety Code.

(b) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.

(c) Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety Code.

(d) Any attempt to commit any of the above-mentioned offenses.

SEC. 16. Section 87012 of the Education Code is repealed.

SEC. 16.5. Section 87012 is added to the Education Code, to read:

87012. (a) On or after July 1, 1990, the board of governors shall refuse to accept credential applications, and shall only approve or deny all credential applications which have been received prior to July 1, 1990.

(b) The State Bureau of Criminal Identification and Investigation shall, with respect to all individuals who apply for or who have been issued credentials by the board of governors, continue to furnish the board of governors with all information pertaining to any credential applicant or holder of whom there is a record in the State Bureau of Criminal Identification and Investigation.

(c) The board of governors may secure records or reports from the State Bureau of Criminal Identification and Investigation regarding individuals who hold valid credentials issued by the board of governors.

(d) The board of governors shall periodically report to community college districts regarding information it receives from the State Bureau of Criminal Identification and Investigation. The reports shall be limited to records related to any sex offense as defined in Section 87010, any controlled substance offense, as defined in Section 87011, or offenses defined in Article 1 (commencing with Section 3500) of Chapter 1, Part 1.5, of Division 6 of the Welfare and Institutions Code.

SEC. 17. Section 87013 is added to the Education Code, to read:

87013. Whenever a community college district employs a person in an academic position and that person has not previously been employed by a school or community college district in this state, the governing board may, within 10 working days of the person's date of

employment, require the individual to have duplicate personal identification cards upon which shall appear the legible fingerprints and a personal description of the employee prepared by a local law enforcement agency having jurisdiction in the area of the district. The law enforcement agency shall transmit the cards, together with the fee hereinafter specified, to the Department of Justice. At the earliest opportunity following its receipt of the identification cards, the Department of Justice shall furnish the law enforcement agency submitting the employee's fingerprints a complete criminal history of the individual if one appears in the department's files. The local law enforcement agency shall, in turn, excerpt from the history all information regarding any convictions of the employee and shall forward that information to the governing board of the district.

A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

The governing board may provide the means whereby the identification cards may be completed and may charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice, with two copies of applicant's or employee's fingerprint cards. The governing board may collect an additional fee not to exceed two dollars ($2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards.

Any provision of law to the contrary notwithstanding, the Department of Justice, shall, as provided in this section, furnish, upon application of a local public law enforcement agency all information pertaining to any person required to submit personal identification cards pursuant to this section if there is a record of the person in its office.

SEC. 18. Section 87014 of the Education Code is amended to read:

87014. (a) Whenever any employee of a community college district is attacked, assaulted, or menaced, by any student, it shall be the duty of that employee, and the duty of any person under whose direction or supervision the employee is employed who has knowledge of the incident, to promptly report the same to the appropriate law enforcement authorities of the county or city in which the same occurred. Failure to make the report shall be a misdemeanor punishable by a fine of not more than two hundred dollars ($200).

(b) An act by any member of the governing board of a community college district, or any employee of any community college district which is designed directly or indirectly to influence or urge a person

under a duty to make the report prescribed by subdivision (a) not to make the report, shall be a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars ($100) or more than two hundred dollars ($200).

SEC. 19. Section 87035 of the Education Code is amended to read:

87035. (a) The governing board of a community college district may grant leaves of absence to employees to appear as a witness in court other than as a litigant or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee.

(b) The governing board of a community college district may grant leaves of absence to employees, in academic positions regularly called for jury duty in the manner provided for by law.

(c) The governing board may grant such leaves of absence with pay up to the amount of the difference between the employee's regular earnings and any amount he or she receives for jury or witness fees.

SEC. 20. Section 87036 of the Education Code is amended to read:

87036. The governing board of a community college shall grant leave of absence to any employee serving in a classified or other nonacademic position regularly called for jury duty in the manner provided for by law. The governing board shall grant such leave with pay up to the amount of the difference between the employee's regular earnings and any amount he or she receives as juror's fees.

It is unlawful for the governing board or personnel commission of any community college district to adopt or maintain any rule, regulation, or policy which has as its purpose or effect a tendency to encourage employees to seek exemption from jury duty, or to directly or by indirection solicit or suggest to any employee that he or she seek exemption from jury duty, or to discriminate against any employee with respect to assignment, employment, promotion, or in any other manner because of such employee's service on any jury panel.

Nothing in the foregoing provisions shall preclude the district superintendent or his or her agent from discussing with the affected employee the practicality of seeking exemption when acceptance would tend to materially disrupt the district's operations.

SEC. 21. The heading of Article 3 (commencing with Section 87060) of Chapter 1 of Part 51 of the Education Code is amended to read:

Article 3. Personnel Interchange Between Academic and Classified Positions

SEC 22. Section 87060 of the Education Code is amended to read:

87060. The purpose of this article is to provide a basis of determination as to what constitutes a supervisory or administrative classified position or an academic position not clearly defined in other sections of this code; to provide an interchange of qualified

personnel between the academic and classified services; and to secure rights and benefits to employees moving between the two services, all to the end of assuring better educational systems for the students of the community colleges.

The provisions of this article are not intended, nor may they be construed, to invalidate any other sections of this code which were enacted prior to the enactment of this article, relating to academic positions or the classified service covered in Article 3 (commencing with Section 88060) of Chapter 4 of this part, unless specifically provided herein. This article shall where appropriate apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of Chapter 4 of this part.

SEC. 23. Section 87061 of the Education Code is amended to read:

87061. If an employee of a community college district, including a district having the merit system as outlined in Article 3 (commencing with Section 88060) of Chapter 4, employed in an academic position is assigned to a position in the classified service of the same district, the employee shall retain all sickness and injury, sabbatical leave, and other rights and benefits. All seniority and tenure rights accumulated by the employee at the time of assignment to the position in the classified service shall be secured to the employee during the period of time he or she occupies a position in the classified service. The employee's return to academic service at any time shall be treated as if there had not been an interruption in his or her certificated service.

SEC. 24. Section 87062 of the Education Code is amended to read:

87062. If an employee of a community college district, including a district having the merit system as outlined in Article 3 (commencing with Section 88060) of Chapter 4, employed in a position in the classified service is assigned to an academic position in the same district, the employee shall retain all sick leave, vacation, and other rights and benefits accumulated by the employee at the time he or she is assigned to an academic position. All seniority and permanency rights shall be secured to the employee during the period of time he or she occupies an academic position. The employee's return to the classified service at any time shall be treated as if there had not been an interruption in his or her classified service.

SEC. 25. Section 87064 of the Education Code is repealed.

SEC. 26. Section 87067 of the Education Code is repealed.

SEC. 27. Section 87100 of the Education Code is amended to read:

87100. The Legislature finds and declares that:

(a) Generally, California Community Colleges employ a disproportionately low number of racial and ethnic minority classified employees and faculty and a disproportionately low number of women and members of racial and ethnic minorities in administrative positions.

(b) It is educationally sound for the minority student attending a

racially impacted school to have available the positive image provided by minority classified and academic employees. It is likewise educationally sound for the student from the majority group to have positive experiences with minority people which can be provided, in part, by having minority classified and academic employees at schools where the enrollment is largely made up of majority group students. It is also educationally important for students to observe that women as well as men can assume responsible and diverse roles in society.

(c) Past employment practices created artificial barriers and past efforts to promote additional action in the recruitment, employment, and promotion of women and minorities have not resulted in a substantial increase in employment opportunities for such persons.

(d) Lessons concerning democratic principles and the richness which racial diversity brings to our national heritage can be best taught by the presence of staffs of mixed races and ethnic groups working toward a common goal.

It is the intent of the Legislature to establish and maintain a policy of equal opportunity in employment for all persons and to prohibit discrimination based on race, sex, color, religion, age, handicap, ancestry, or national origin in every aspect of personnel policy and practice in employment, development, advancement, and treatment of persons employed in the public school system, and to promote the total realization of equal employment opportunity through a continuing affirmative action employment program.

The Legislature recognizes that it is not enough to proclaim that public employers do not discriminate in employment but that effort must also be made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility.

SEC. 28. Section 87101 of the Education Code is amended to read:

87101. For the purposes of this article:

(a) "Affirmative action employment program" means planned activities designed to seek, hire, and promote persons who are underrepresented in the work force compared to their number in the population, including handicapped persons, women, and persons of minority racial and ethnic backgrounds. It is a conscious, deliberate step taken by a hiring authority to assure equal employment opportunity for all staff, both academic and classified. These programs require the employer to make additional efforts to recruit, employ, and promote members of groups formerly excluded at the various levels of responsibility who meet statewide minimum qualifications, if any, and who, relative to local qualifications beyond the statewide minimum qualifications, are qualified or may become qualified through appropriate training or experience within a reasonable length of time. The programs should be designed to remedy the exclusion, whatever its cause. Affirmative action requires imaginative, energetic, and sustained action by each

employer to devise recruiting, training, and career advancement opportunities which will result in an equitable representation of women and minorities in relation to all employees of the employer.

(b) "Goals and timetables" means projected new levels of employment of women and minority racial and ethnic groups to be attained on an annual schedule, given the expected turnover in the work force and the availability of persons who are, relative to local qualifications beyond the statewide minimum qualifications, qualified or may become qualified through appropriate training or experience within a reasonable length of time. Goals are not quotas or rigid proportions. They should relate both to the qualitative and quantitative needs of the employer.

(c) "Public education agency" means the office of the chancellor and the governing board of each community college district in California.

SEC. 29. Section 87103 of the Education Code is amended to read:

87103. The office of the Chancellor of the California Community Colleges shall render assistance in developing and implementing affirmative action employment programs to community college districts under its jurisdiction.

SEC. 30. Section 87203 is added to the Education Code, to read:

87203. There is in the State Treasury the Community College Credentials Fund. All fees levied and collected by the board of governors pursuant to this chapter shall be deposited in the Community College Credentials Fund, and are hereby continuously appropriated to support the activities and functions of the board of governors.

SEC. 31. Section 87351 is added to the Education Code, to read:

87351. The minimum qualifications for service prescribed by this chapter shall become operative on July 1, 1990.

SEC. 32. Section 87356 of the Education Code is amended to read:

87356. (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for service as a faculty member teaching credit instruction, a faculty member teaching noncredit instruction, a librarian, a counselor, an educational administrator, an extended opportunity programs and services worker, a disabled students programs and services worker, an apprenticeship instructor, and as a supervisor of health.

(b) Unless and until amended by the board of governors, the regulations shall establish the minimum qualifications for service as a supervisor of health as the following:

(1) The qualifications for a physician employed to serve on a halftime or greater than halftime basis shall be a valid certificate to practice medicine and surgery issued by the State Board of Medical Examiners or Board of Osteopathic Examiners.

(2) The qualifications for a physician employed for less than halftime shall be a valid certificate to practice medicine and surgery issued by the State Board of Medical Examiners.

(3) The qualifications for a psychologist or social worker shall be

a valid certificate issued by the appropriate California agency authorized by law to certify these persons.

(4) The qualifications for a dentist shall be a valid certificate issued by the Board of Dental Examiners of California.

(5) The qualifications for a dental hygenist shall be a valid certificate issued by the Board of Dental Examiners of California.

(6) The qualifications for a nurse shall be a valid certificate of registration issued by the Board of Nurse Examiners of the State of California or the California Board of Nursing Education and Nurse Registration.

(7) The qualifications for an optometrist shall be a valid certificate issued by the State Board of Optometry.

(8) The qualifications for an audiometrist working under the direction of health services personnel shall be a valid certificate or license issued by, or valid registration with, the California state agency authorized to issue the certificate or license, or to effect the registration required for the performance of the service.

(c) The Legislature finds and declares that this section does not create a state-mandated local program cost because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

SEC. 33. Section 87357 of the Education Code is amended to read:

87357. (a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, the board of governors shall consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate. With regard to minimum qualifications for educational administrators, the board of governors shall consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. With regard to minimum qualifications for apprenticeship instructors, the board of governors shall consult with, and rely primarily on the advice and judgment of, appropriate apprenticeship teaching faculty and labor organization representatives. In each case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) The board of governors shall establish a process to review at least every three years the continued appropriateness of the minimum qualifications, and the adequacy of the means by which they are administered. The process shall provide for the appointment of a representative group of community college faculty, administrators, students, and trustees to conduct or otherwise assist in the review, including particularly, representatives of academic senates, collective bargaining organizations, and statewide faculty associations. In addition, the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and representative of ethnic minority

communities.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for service.

SEC. 34. Section 87400 of the Education Code is amended to read:

87400. Governing boards of community college districts shall employ for academic positions, only persons who possess the qualifications therefor prescribed by regulation of the board of governors. It shall be contrary to the public policy of this state for any person or persons charged, by those governing boards, with the responsibility of recommending persons for employment by those boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of those applicants for that employment.

SEC. 35. Section 87401 of the Education Code is repealed.

SEC. 36. Section 87402 of the Education Code is repealed.

SEC. 37. Section 87405 of the Education Code is amended to read:

87405. (a) Governing boards of commmunity college districts shall not employ or retain in employment persons who have been convicted of any sex offense as defined in Section 87010 or controlled substance offense as defined in Section 87011. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(b) Notwithstanding subdivision (a), no person shall be denied employment or not be retained solely on the basis that he or she has been convicted of a sex offense or a controlled substance offense if he or she has obtained or applied for a certificate of rehabilitation and pardon under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, and if his or her probation has

been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivision (a), a person may be employed or retained despite being convicted of a sex offense or a controlled substance offense if the governing board determines from the evidence presented that the person has been rehabilitated for at least five years, or has received a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, or if the accusation or information against the person has been dismissed and he or she has been released from all disabilities and penalties resulting from the offense pursuant to Section 1203.4 of the Penal Code.

SEC. 38. Section 87406 of the Education Code is amended to read:

87406. Governing boards of community college districts shall not employ or retain in employment any person who has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 5500), Chapter 1, Part 1.5, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state. If, however, the determination is reversed and the person is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he or she is a sexual psychopath is dismissed, this section does not prohibit his or her employment thereafter.

SEC. 39. Section 87408 of the Education Code is amended to read:

87408. (a) When a community college district wishes to employ a person in an academic position and that person has not previously been employed in an academic position in this state, the district shall require a medical certificate showing that the applicant is free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students. The medical certificate shall be submitted directly to the governing board by a physician and surgeon licensed under the Business and Professions Code, a commissioned medical officer exempted from licensure by Section 2144 of the Business and Professions Code, or a commissioned medical officer in the United States Air Force. The medical examination shall have been conducted not more than six months before the submission of the certificate and shall be at the expense of the applicant. A governing board may offer a contract of employment to an applicant subject to the submission of the required medical certificate. Notwithstanding Section 87031, the medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

(b) The governing board of a community college district may require academic employees to undergo a periodic medical examination by a physician and surgeon licensed under the Business and Professions Code, or a commissioned medical officer exempted from licensure by Section 2144 of the Business and Professions Code, to determine that the employee is free from any communicable

disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students. The periodic medical examination shall be at the expense of the district. The medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

SEC. 40. Section 87408.6 of the Education Code is amended to read:

87408.6. (a) Except as provided in subdivision (h), no person shall be initially employed by a community college district in an academic or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. This examination shall consist of an X-ray of the lungs, or an approved intradermal tuberculin test, which, if positive, shall be followed by an X-ray of the lungs.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent, or his or her designee, may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examinations shall no longer be required and referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent a certificate from the examining physician and surgeon showing the employee was examined and found free from active tuberculosis. "Certificate," as used in this subdivision, means a certificate signed by the examining physician and surgeon or a notice from a public health agency or unit of the American Lung Association which indicates freedom from active tuberculosis. The latter, regardless of form, will constitute evidence of compliance with this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse the person in a like manner prescribed for employees in subdivision (e).

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with the provisions of this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a college year whose functions do not require frequent or prolonged contact with students.

The governing board may, however, require the examination and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around college premises would constitute a health hazard to students.

(g) If the governing board of a community college district determines by resolution, after hearing, that the health of students in the district would not be jeopardized thereby, the provisions of this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that such affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one campus or community college district to another shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate which shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the college previously employing him or her that it has a certificate on file which contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to the community college district subject to this section shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate as provided for in Section 3450 of the Health and Safety Code which shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has such a certificate on file.

(i) Any governing board of a community college district providing for the transportation of students under contract shall require as a condition of such contract the examination for active

tuberculosis, as provided in subdivision (a) of this section, of all drivers transporting such students, provided that privately contracted drivers who transport such students on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

(j) Examinations required pursuant to subdivision (i) shall be made available without charge by the local health officer.

SEC. 41. Section 87409 of the Education Code is repealed.

SEC. 42. Section 87410 of the Education Code is amended to read:

87410. Any academic employee not a regular employee who fails to signify his acceptance within 45 consecutive calendar days after notice of his or her election or employment has been given him or her, or mailed to him or her by United States registered mail with postage thereon prepaid at his or her last known place of address, by the clerk or secretary of the governing board of the community college district, shall be deemed to have declined the employment.

SEC. 43. Section 87412 of the Education Code is repealed.

SEC. 44. Section 87414 of the Education Code is amended to read:

87414. Every contract or regular employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he or she first rendered paid service in a probationary or contract position.

Every academic employee who first rendered paid service on the same date shall participate in a single drawing to determine the order of employment except that in community college districts having an average daily attendance in excess of 15,000, an independent auditing firm may be employed to assign to those employees numbers at random which shall determine the order of employment. Any determination of an employee's order of employment pursuant to this section shall be made within 30 days of the date service was first rendered by the employee.

SEC. 45. *Section 87415 of the Education Code is amended to read:*

87415. The following general provisions shall apply regardless of date of employment:

The order once determined by lot shall be permanent, and shall be entered on the permanent records of the district.

Records showing date of employment, whether kept by the district or by the county, shall be accessible, on demand, to any academic employee of the district or to his or her designated representative.

In the absence of records as to any of the matters referred to in the two preceding sections, the board, in accordance with evidence presented, shall determine the order of employment after giving employees a reasonable opportunity to present such evidence.

The governing board of every community college district shall establish the order of employment of all contract or regular employees of the district in the manner prescribed by Sections 87400 to 87424, inclusive, and shall keep a roster of same as a public record.

Whether or not a roster is kept in other districts, the order of employment in all districts, when required, shall be determined as

prescribed by Sections 87400 to 87424, inclusive.

The board shall have power and it shall be its duty to correct any errors discovered from time to time in its records showing the order of employment.

SEC. 46. Section 87416 of the Education Code is amended to read:

87416. When any college or part thereof shall have been transferred from one community college district to another, employment for any employees who transfer with the college or part thereof shall date from the time those employees first accepted employment (if before July 1, 1947) or rendered paid service (if after June 30, 1947) as contract employees in the district from which the college or part thereof and the employees were transferred.

SEC. 47. Section 87417 of the Education Code is amended to read:

87417. When any academic employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his or her date of employment shall be deemed to be the date on which he or she first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his or her reemployment.

When an employee's services are terminated for lack of enrollment or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service, his or her original order of employment shall stand.

SEC. 48. Section 87419.1 of the Education Code is amended to read:

87419.1. Notwithstanding Section 87419, and notwithstanding provisions of the charter of any city or city and county to the contrary, on and after July 1, 1978, the academic employees of any community college district governed by the charter who serve as the head of a department of the district or in an administrative or supervisory position shall neither acquire nor retain permanent status in that position unless the employee is or becomes eligible for permanent status in accordance with provisions of this code.

SEC. 49. Section 87420 of the Education Code is amended to read:

87420. All employments made under the provisions of Sections 72422, 87210, Sections 87401 to 87452, inclusive, Sections 87454 to 87462, inclusive, Sections 87464 to 87466, inclusive, Sections 87468 to 87480, inclusive, or Sections 87600 to 87626 inclusive, shall be subordinate to the right of the Legislature to amend or repeal Sections 72422, 87210, Sections 87401 to 87452, inclusive, Sections 87454 to 87462, inclusive, Sections 87464 to 87466, inclusive, Sections 87468 to 87480, inclusive, Sections 87600 to 87626 inclusive, or any provision or provisions thereof at any time, and nothing herein contained shall be construed to confer upon any person employed pursuant to the provisions hereof a contract which will be impaired by the amendment or repeal of Sections 72422, 87210, Sections 87401 to 87452, inclusive, Sections 87454 to 87462, inclusive, Sections 87464 to 87466, inclusive, and Sections 87468 to 87480, inclusive, Sections 87600 to 87626, inclusive, or of any provision or provisions thereof.

SEC. 50. Section 87421 of the Education Code is amended to read:

87421. Nothing in this code shall be construed as prohibiting the employment of persons in academic positions for less than a full school year in temporary schools or classes.

SEC. 51. Section 87422 of the Education Code is amended to read:

87422. Any agreement between the governing board of a community college district and authorities of any foreign country, or of any state, territory, or possession of the United States, or of any other district within the state, for the temporary exchange of academic employees, shall be for a period not to exceed three years. No exchange shall be made without the consent of the academic employees to be exchanged.

No person may serve as an exchange employee of a community college district in the state unless he or she or is qualified for service under Section 87355, 87356, or 87359.

SEC. 52. Section 87428 of the Education Code is amended to read:

87428. No community college district may adopt or maintain any rule or regulation which requires a candidate for an academic position to be a resident of the district or to become a resident of the district, or which requires that an employee maintain residency within the district; nor may a district grant any preferential treatment to candidates or employees because they are residents of the district.

SEC. 53. Section 87432 of the Education Code is repealed.

SEC. 54. Section 87438 of the Education Code is repealed.

SEC. 55. Section 87440 of the Education Code is repealed.

SEC. 56. Section 87441 of the Education Code is repealed.

SEC. 57. Section 87442 of the Education Code is repealed.

SEC. 58. Section 87443 of the Education Code is repealed.

SEC. 59. Section 87444 of the Education Code is repealed.

SEC. 60. Section 87445 of the Education Code is repealed.

SEC. 61. Section 87446 of the Education Code is repealed.

SEC. 62. Section 87447 of the Education Code is repealed.

SEC. 63. Section 87449 of the Education Code is amended to read:

87449. When an instructor of classes for adults serves sufficient probationary time to be eligible for election to permanent classification in that district, his or her tenure shall be for service which is equivalent to the average number of hours per week which he or she has served during his or her probationary years. In no case shall such an employee be classified as permanent for more than one full-time assignment. The service for which such a person has acquired tenure may be reduced in conformity with Sections 87743 and 87744.

SEC. 64. Section 87454 of the Education Code, as amended by Chapter 973 of the Statutes of 1988, is amended to read:

87454. A tenured employee, when assigned from a faculty position to an educational administrative position, or assigned any special or other type of work, or given special classification or designation, shall retain his or her status as a tenured faculty

member.

SEC. 65. Section 87458 of the Education Code is amended to read:

87458. A person employed in an administrative position that is not part of the classified service, who has not previously acquired tenured status as a faculty member in the same district, shall have the right to become a first year probationary faculty member once his or her administrative assignment expires or is terminated if all of the following apply:

(a) The process by which the governing board reaches the determination shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that the administrator possesses the minimum qualifications for employment as a faculty member. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(b) Until a joint agreement is reached pursuant to subdivision (a), the district process in existence on January 1, 1989, shall remain in effect.

(c) The administrator has completed at least two years of satisfactory service, including any time previously served as a faculty member, in the district.

(d) The termination of the administrative assignment is for any reason other than dismissal for cause.

(e) This section shall apply to every educational administrator whose first day of paid service in the district as a faculty member or an administrator is on or after July 1, 1990.

SEC. 66. Section 87458.1 is added to the Education Code, to read:

87458.1. (a) A person employed in an administrative or supervisory position requiring certification qualifications upon completing a probationary period, including any time served as a classroom instructor, in the same district, shall be classified as and become a regular employee as a classroom instructor.

(b) This section shall only apply to persons whose first day of paid service in the district without a break in service precedes July 1, 1990.

SEC. 67. Section 87459 of the Education Code is amended to read:

87459. Notwithstanding the provisions of Section 87458 to the contrary, the governing board of any community college district shall, with respect to each person who is employed in an administrative or supervisory position requiring certification qualifications under a contract of employment providing a four-year term of employment and who either has not been previously employed by the district in such position or has been employed in such position but not under such a four-year contract, determine

prior to May 15 of the third year under such four-year contract of employment whether to grant or deny the person regular classification as a classroom instructor. If the board grants the classification, the person shall be classified as and become a regular employee as a classroom instructor. This section shall only apply to persons whose first day of paid service in the district without a break in service precedes July 1, 1990.

SEC. 68. Section 87460 of the Education Code is amended to read:

87460. A person employed in an administrative or supervisory position by more than one district shall be given regular classification in whichever district he may select for the regular classification. Other regular classification shall be given to such an employee in a district situated wholly or partly within a city or city and county where the charter of the city or city and county provides for other classification. This section shall only apply to persons whose first day of paid service in the district without a break in service precedes July 1, 1990.

SEC. 69. Section 87461 of the Education Code is amended to read:

87461. Any academic employee having permanent classification in a district, who is granted a leave of absence and transfers to another district which is under the supervision of the same chief administrative officer or district superintendent as the district from which the employee is on leave, may acquire regular classification in the district to which he or she transferred if he is employed for a second year in that district, at which time his or her permanent classification in the district from which he or she transferred shall expire.

SEC. 70. Section 87462 of the Education Code is amended to read:

87462. A permanent employee of a high school district who was classified as such while serving in a community college maintained by the high school district shall, if the high school district is included in a community college district, be classified as a regular employee of the community college district if employed by the community college district in a faculty position.

SEC. 71. Section 87463 of the Education Code is amended to read:

87463. Any community college faculty member who instructs in a four-year state institution of higher education maintained on the campus of the community college pursuant to contracts entered into between the Trustees of the California State University and the district, shall, without regard to subject or grade taught, whether of community college level or higher, acquire and retain all rights to employment in the district the same as though the employee were teaching exclusively in a community college of the district. However, nothing in this section shall be construed to prevent the employee from resigning from employment in the district pursuant to the provisions of Section 87730.

SEC. 72. Section 87464 of the Education Code is amended to read:

87464. The division, uniting, unification, or consolidation of any community college district or districts, or any change in district

boundaries or organization, shall not affect the classification of academic employees already employed by any district affected. These employees shall have the same status with respect to their classification by the district, including time served as contract employees of the district after the division, uniting, unification, or consolidation, or change in district boundaries or organization as they had prior thereto. If the division, uniting, unification, or consolidation, or change in district boundaries or organization results in the school or other place in which any such employee is employed being maintained by another district, any such employee, if a regular employee of the district which formerly maintained the school or other place of employment, shall be employed as a regular employee of the district which thereafter maintains the school or other place of employment, unless the employee elects to continue in the employ of the first district. If the employee is a contract employee of the district which formerly maintained the school or other place of employment, he shall be employed by the district which thereafter maintains the school or other place of employment, unless the contract employee is terminated by the district pursuant to Article 2 (commencing with Section 87600), and, if not so terminated, his or her status with respect to classification by the district shall be the same as it would have been had the school or other place of employment continued to be maintained by the district which formerly maintained it. As used in this paragraph, "the school or other place in which any employee is employed" and all references thereto, includes, but is not limited to, the school services or school program which, as a result of any division, uniting, unification, or consolidation of a district, will be provided by another district, irrespective of whether any particular building or buildings in which such schoolwork or school program was conducted is physically located in the new district and irrespective of whether any new district resulting from the division elects to provide for the education of its students by contracting with another school district until the time that the new district constructs its own facilities.

As used in the preceding paragraph of this section "any change in district boundaries or organization" includes, but is not limited to, the formation of a community college district.

SEC. 73. Section 87470 of the Education Code is amended to read:

87470. The governing board of any community college district may employ faculty in programs and projects to perform services conducted under contract with public or private agencies, or other categorically funded projects of indeterminate duration under terms and conditions mutually agreed upon by the employee and the governing board. The agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a regular employee of a community college district unless (1) the person has served pursuant to this section for at least 75 percent of the number of days in regular schools of the district by

which he is employed are maintained, and (2) the person is subsequently employed as a contract employee in a faculty position. These persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of contract or regular employees.

This section shall not be construed to apply to any faculty member who has been employed in the regular educational programs of the district as a contract employee before being subsequently assigned to any one of these programs nor shall it apply to those employees employed in programs operated pursuant to, or funded pursuant to, Article 8 (commencing with Section 69640) of Chapter 2 of Part 42, or Section 78440, 78441, 78600, or 84850.

SEC. 74. Section 87471 of the Education Code is amended to read:

87471. Service by a person as an instructor in classes conducted at regional occupational centers or programs, as authorized pursuant to Section 52301, shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a regular employee of a community college district.

This section shall not be construed to apply to any faculty member who has been employed to instruct in the regular educational programs of the district and subsequently assigned as an instructor in regional occupational centers or programs, nor shall it affect the status of regional occupational center instructors classified as regular or contract at the time this section becomes effective.

SEC. 75. Section 87472 of the Education Code is amended to read:

87472. Service by a person under a provisional credential shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a regular employee of a community college district. This section shall become inoperative on July 1, 1992, and as of January 1, 1993, this section is repealed unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 76. Section 87474 of the Education Code is amended to read:

87474. Nothing in this code shall be construed as permitting a faculty member to acquire regular classification with respect to employment in a summer school maintained by a community college district, and service in connection with any such employment shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a regular employee of the district. The provisions of this section do not constitute a change in, but are declaratory of, the preexisting law.

SEC. 77. Section 87475 of the Education Code is amended to read:

87475. If an employee of a community college district has served as a contract employee of the district in a faculty position, for one complete school year, and in the year immediately preceding the service as contract employee has served as a temporary faculty member for at least 75 percent of the number of days the regular

schools of the district were maintained, the governing board of the district may count the year of employment as a temporary employee as one year of the probationary period which he or she is required by law to serve as a condition to being classified as a regular employee of the district.

SEC. 78. Section 87476 of the Education Code is repealed.

SEC. 79. Section 87477 of the Education Code is amended to read:

87477. Governing boards of community college districts shall classify as contract employees, those faculty members who have not been classified as regular employees or as temporary employees. The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new faculty member shall receive a written statement indicating his or her employment status and the salary that he or she is to be paid. If a community college district hires a faculty member as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. If a written statement does not indicate the temporary nature of the employment, the faculty member shall be deemed to be a contract employee of the community college district, unless employed with regular status.

SEC. 80. Section 87478 of the Education Code is amended to read:

87478. Except as provided in Sections 87481 and 87482, governing boards of community college districts shall classify faculty employed to fill positions of regularly employed persons absent from service as temporary employees.

After September 1 of any school year, the governing board of a community college district may employ, for the remainder of the school year, in temporary status any otherwise qualified person who consents to be so employed in a position for which no regular employee is available, including persons retired for service under the State Teachers' Retirement System. Inability to acquire the services of a qualified regular employee shall be demonstrated to the satisfaction of the board of governors.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a faculty position, be classified by the governing board as a contract employee and the previous year's employment as a temporary employee shall be deemed a year of employment as a contract employee for purposes of acquiring regular status.

SEC. 81. Section 87480 of the Education Code is amended to read:

87480. Governing boards of community college districts shall classify as temporary employees faculty members, who are employed to serve from day to day during the first three school months of any school term to instruct temporary classes not to exist after the first three school months of any school term or to perform any other duties which do not last longer than the first three school months of any school term, or to instruct in special day and evening classes for

adults or in schools of migratory population for not more than four school months of any school term. If the classes or duties continue beyond the first three school months of any school term or four school months for special day and evening classes for adults, or schools for migratory population, the employee, unless a regular employee, shall be classified as a contract employee. The school year may be divided into not more than two school terms for the purposes of this section.

In any district, the governing board may, to prevent the stoppage of district business when an actual emergency arises and persons are not immediately available for contract classification, make an appointment to a position on a temporary basis for a period not to exceed 20 working days. The person so appointed shall be deemed to be a temporary employee who is employed to serve from day to day. Service by a person in such an appointment on a temporary basis shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a regular employee of a community college district.

SEC. 82. Section 87481 of the Education Code is amended to read:

87481. Notwithstanding the provisions of Sections 87478 and 87480, the governing board of a community college district may employ any qualified individual as a temporary faculty member for a complete school year, but not less than one semester or quarter during a school year unless the date of rendering first paid service begins during the second semester or third quarter and prior to March 15th. The employment of these persons shall be based upon the need for additional faculty during a particular semester, quarter, or year because a faculty member has been granted leave for a semester, quarter, or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant faculty position, be classified by the governing board as a contract employee and the previous year's employment as a temporary employee shall be deemed a year of employment as a contract employee for purposes of acquiring permanent status.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and which is not filled by a regular or contract employee. It shall not include a position which would be filled by a regular or contract employee except for the fact that such employee is on leave.

SEC. 83. Section 87482 of the Education Code is amended to read:

87482. (a) Notwithstanding the provisions of Section 87480, the governing board of a community college district may employ any qualified individual as a temporary faculty member for a complete school year but not less than a complete semester or quarter during a school year. The employment of those persons shall be based upon the need for additional faculty during a particular semester or

quarter because of the higher enrollment of students during that semester or quarter as compared to the other semester or quarter in the academic year, or because a faculty member has been granted leave for a semester, quarter, or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Such employment may be pursuant to contract fixing a salary for the entire semester or quarter.

(b) No person shall be so employed by any one district under this section for more than two semesters or three quarters within any period of three consecutive years.

SEC. 84. Section 87483 of the Education Code is amended to read:

87483. Notwithstanding any other provision, the governing board of a community college district may establish regulations which allow academic employees to reduce their workload from full-time to part-time duties. The regulations shall include, but shall not be limited to, the following if the employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22724 of this code or Section 20815 of the Government Code:

(a) The employee shall have reached the age of 55 prior to reduction in workload.

(b) The employee shall have been employed full time in an academic position or a position requiring certification qualifications, or both, for at least 10 years of which the immediately preceding five years were full-time employment.

(c) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in an academic position or a position requiring certification qualifications, or both, for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(d) The option of part-time employment shall be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.

(e) The employee shall be paid a salary which is the pro rata share of the salary he or she would be earning had he or she not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment.

The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

(f) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his or her final year of

service in a full-time position.

(g) The period of this part-time employment shall not exceed five years for employees subject to Section 20815 of the Government Code or 10 years for employees subject to Section 22724 of this code.

(h) The period of part-time employment of employees subject to Section 20815 of the Government Code shall not extend beyond the end of the school year during which the employee reaches his or her 70th birthday. This subdivision shall not apply to any employee subject to Section 22724 of this code.

SEC. 85. Section 87485 of the Education Code is amended to read:

87485. Except as provided in Section 87744, any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter or any part thereof is null and void.

Notwithstanding provisions of this or any other section of this code, governing boards of community college districts may employ persons in academic positions on less than a full-time basis.

SEC. 86. Section 87486 of the Education Code is amended to read:

87486. The governing board of any community college district may employ or engage as an independent contractor a suitably skilled person to serve as limited-term or part-time reader assistant in connection with instruction in composition and writing, and in mathematics, to faculty. Any person employed as a reader shall not be deemed to be employed in a faculty position, and, unless otherwise determined by the governing board, shall not be subject to the provisions of Chapter 4 (commencing with Section 88000) of Part 51 of this division. The governing board may pay hourly or unit compensation rates as it deems proper for the services rendered. It is the intent of the Legislature in enacting this section not to authorize an increase in the number of students who may be assigned to any class, but to provide an opportunity for improvement in the quality of student writing and mathematics abilities through more frequent assignments of compositions and more work in mathematics made possible by the employment of suitably trained persons to assist the instructor in the careful marking and analysis of the students' work. Furthermore, the means adopted for employing persons as reader assistants is not intended as an encroachment upon the merit system of public employment, but is adopted as the most practical arrangement, since most work of such nature will be done as part-time work and in the home.

SEC. 87. Section 87487 of the Education Code is amended to read:

87487. (a) The governing board of any community college district may employ anyone who is enrolled in a teacher training program conducted in cooperation with the California State University, the University of California or any other accredited teacher training institution in the state, as a teacher assistant. Service by a person under this section shall not be included in computing the service required as a prerequisite to the attainment of, or eligibility to, classification as a permanent employee of a district.

Any person employed under this subdivision shall not be subject

to the provisions of Chapter 1 (commencing with Section 22000) of Part 13 of Division 1 of Title 1.

(b) Notwithstanding anything in Section 87356 to the contrary, the governing board of any community college district may employ a person as a temporary faculty member under Section 87482.5, even though he or she is not qualified for that service under the regulations of the board of governors, if both of the following apply:

(1) The individual is enrolled as a graduate student at the University of California, the California State University, or any other accredited institution of higher education and has completed at least one semester or two academic quarters of his or her graduate program.

(2) He or she has some experience as a teacher and is assigned to render a service that, as determined by the faculty of each department in which the student is given assignments, is consistent with the subject area of the student's graduate program.

SEC. 88. Section 87488 of the Education Code is amended to read:

87488. Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will either: (1) result in a net savings to the district, or (2) result in a reduction of the number of academic employees as a result of declining enrollment, or (3) result in the retention of faculty who are qualified to teach in areas of teacher shortage, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to an academic employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district which shall specify the period.

(b) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the community college district has considered the availability of academic employees to fill the positions

which would be vacated pursuant to this section.

(e) The community college district has certified to the chancellor, prior to the formal action becoming effective in a community college district, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System or the district.

The amount of service credit shall be two years regardless of credited service, but shall not exceed the elapsed period of time intervening between the date of the member's retirement and the date the member attains normal retirement age as determined by the Teachers' Retirement Board. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726 and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section shall become inoperative on July 1, 1990, and, as of January 1, 1991, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 88.5. Section 87488 of the Education Code is amended to read:

87488. Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will either: (1) result in a net savings to the district, or (2) result in a reduction of the number of academic employees as a result of declining enrollment, or (3) result in the retention of faculty who are qualified to teach in areas of teacher shortage, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to an academic employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district which shall specify the period.

(b) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board which

equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22300 and shall be subject to Sections 22206.5 and 24703. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the community college district has considered the availability of academic employees to fill the positions which would be vacated pursuant to this section.

(e) The community college district has certified to the Teachers' Retirement Board, prior to the formal action becoming effective in a community college district, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System or the district.

The amount of service credit shall be two years regardless of credited service . The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726 and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section, 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. 89. The heading of Article 2 (commencing with Section 87600) of Chapter 3 of Part 51 of the Education Code is amended to read:

Article 2. Employment of Faculty

SEC. 90. Section 87600 of the Education Code is amended to read:

87600. The provisions of this article govern the employment of persons by a district to serve in faculty positions and establish certain rights for these employees. Other provisions of the law which govern the employment of community college faculty or establish rights and responsibilities for these persons shall be applied to persons employed by community college districts in a manner consistent with the provisions of this article.

SEC. 102. Section 87612.5 is added to the Education Code, to read:

87612.5. (a) This article shall govern the employment, reemployment, and acquisition of tenure of faculty whose first day of paid service is on or after July 1, 1991, or on or after the date specified in subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988, whichever is later. Article 2 (commencing with Section 87600) of Chapter 3 of Part 51 of the Education Code as it read immediately before the enactment of Chapter 973 of the Statutes of 1988, shall govern the employment, reemployment, and acquisition of tenure of all other faculty.

(b) This section is repealed as of two years following the date specified in subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988, unless a later enacted statute deletes or extends the date on which it is repealed.

SEC. 104. The heading of Article 3 (commencing with Section 87620) of Chapter 3 of Part 51 is amended to read:

Article 3. Community College Faculty

SEC. 105. Section 87620 of the Education Code is amended to read:

87620. The provisions of this article apply to all persons employed as faculty members by a community college district.

SEC. 106. Section 87622 of the Education Code is amended to read:

87622. The employment, rights, responsibilities, dismissal, imposition of penalties for persons employed by a community college district in faculty positions shall be governed by the provisions of Article 2 (commencing with Section 87600), and Article 4 (commencing with Section 87660) of this chapter. The employment of faculty by a community college district shall otherwise be governed as provided by law and in a manner consistent with the provisions of Articles 2 and 4 and with the provisions of this article (hereinafter referred to in this article, collectively, as "this act").

Whenever in Sections 87733 to 87739, inclusive, the term "Commission on Professional Competence" is used, it shall be deemed for the purposes of this chapter to mean either "arbitrator" or "hearing officer," whichever is the case.

The provisions of this act shall take precedence, for the purposes of community college faculty, over any other act enacted by the Legislature at any session which, explicitly or implicitly, would result in community college faculty being governed by provisions inconsistent with the provisions of this act.

SEC. 107. Section 87623 of the Education Code is repealed.

SEC. 108. Section 87624 of the Education Code is repealed.

SEC. 109. Section 87625 of the Education Code is repealed.

SEC. 110. The heading of Article 4 (commencing with Section 87660) of Chapter 3 of Part 51 of the Education Code is amended to read:

Article 4. Evaluations and Discipline

SEC. 111. Section 87660 of the Education Code is amended to read:

87660. The provisions of this article govern the evaluation of, the dismissal of, and the imposition of penalties on, community college faculty. Other provisions of this code which govern the evaluation of, dismissal of, and the imposition of penalties on, community college faculty shall be applied to persons employed by a community college district in a manner consistent with the provisions of this article.

SEC. 112. Section 87661 of the Education Code is amended to read:

87661. For the purposes of this article:

(a) "Contract employee" or "probationary employee" means an employee of a district who is employed on the basis of a contract in accordance with Section 87605, subdivision (b) of Section 87608, or subdivision (b) of Section 87608.5.

(b) "District" means a community college district.

(c) "Regular employee" or "tenured employee" means an employee of a district who is employed in accordance with subdivision (c) of Section 87608, subdivision (c) of Section 87608.5, or Section 87609.

(d) "Academic year" means that period between the first day of a fall semester or quarter and the last day of the following spring semester or quarter.

SEC. 113. Section 87662 of the Education Code is amended to read:

87662. Except as provided in Section 72411 and subdivision (i) of Section 87663, the provisions of this article do not apply to administrators employed pursuant to Section 72411.

SEC. 114. Section 87663 of the Education Code, as amended by Section 51 of Chapter 973 of the Statutes of 1988, is amended to read:

87663. (a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once

every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a faculty member by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.

(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation.

SEC. 115. Section 87664 of the Education Code is amended to read:

87664. The governing board of each district, in consultation with the faculty, shall adopt rules and regulations establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its faculty to meet in the performance of their duties. Such procedures and standards shall be uniform for all contract employees of the district with similar general duties and responsibilities and shall be uniform for all regular employees of the district with similar general duties and responsibilities.

SEC. 116. Section 87670 of the Education Code is amended to read:

87670. The procedure set forth in this article does not apply to an immediate suspension effected under Section 87736.

SEC. 117. Section 87684 of the Education Code is repealed.

SEC. 118. The heading of Article 5 (commencing with Section

87700) of Chapter 3 of Part 51 of the Education Code is amended to read:

Article 5. Miscellaneous

SEC. 119. Section 87700 of the Education Code is amended to read:

87700. Every person employed by a community college district as a contract or regular employee in an academic position who enters the active military service of the United States of America or of the State of California, including active service in any uniformed auxiliary of, or to, any branch of such military service, created or authorized as such auxiliary by the Congress of the United States of America or by the Legislature of the State of California, or in the service of the United States Merchant Marine, or in full-time paid service of the American Red Cross, during any period of national emergency declared by the President of the United States of America or during any war in which the United States of America is engaged, shall be entitled to absent himself or herself from his or her duties as an employee of the district.

Such absence shall not affect in any way the classification of the employee. In the case of a contract employee, the period of the absence shall not count as part of the service required as a condition precedent to the classification of the employee as a regular employee of the district, but such absence shall not be construed as a break in the continuity of the service of the employee for any purpose.

The dismissal or termination of any contract employee because of reduced attendance due to war conditions, after his or her entry into the active military service or service in the American Red Cross, shall not deprive him or her of any of the benefits of this section.

Within six months after the employee honorably leaves the service or has been placed on inactive duty he or she shall, subject to the provisions of this section, be entitled to return to the position held by him or her at the time of his or her entrance into the service, at the salary to which he or she would have been entitled had he or she not absented himself or herself from the service of the district under this section.

If the employee was employed under a lawful contract for a period in excess of one year in a position in which he or she had not become a regular employee of the district, he or she shall be entitled to return to the position for the period his or her contract of employment had to run at the time he or she entered the service. Notwithstanding any provision of this code to the contrary, a person employed to take the place of any such employee shall not have any right to the position following the return of the employee to the position.

SEC. 120. Section 87701 of the Education Code is amended to read:

87701. Every person employed by a community college district as a permanent employee in an academic position who is elected to the

Legislature shall be granted a leave of absence from his or her duties as an employee of the district by the governing board of the district.

During the term of the leave of absence, the employee may be employed by the district to perform less than full-time service, for compensation and upon terms and conditions, as may be mutually agreed upon.

This absence shall not affect in any way the classification of the employee.

Within six months after the term of office of the employee expires he or she shall be entitled to return to the position held by him at the time of his or her election, at the salary to which he or she would have been entitled had he or she not absented himself or herself from the service of the district under this section.

Notwithstanding any provision of this code to the contrary, a person employed to take the place of any such employee shall not have any right to the position following the return of the employee to the position.

This section shall apply to any permanent employee who held the office of Member of the Assembly or State Senator on or after January 4, 1965.

SEC. 121. Section 87708 of the Education Code is amended to read:

87708. (a) Every parent, guardian, or other person who assaults or abuses any academic employee in the presence or hearing of a community college student is guilty of a misdemeanor.

(b) Any parent, guardian, or other person who assaults or abuses any academic employee in the presence of other community college personnel or students and at a place which is on community college premises or public sidewalks, streets, or other public ways adjacent to school premises, or at some other place where the employee is required to be in connection with assigned college activities is guilty of a misdemeanor.

SEC. 122. Section 87714 of the Education Code is amended to read:

87714. The chief executive officer of each community college district shall, at times as required by the board of governors, provide an affidavit that, during the 12 months preceding the execution of the affidavit, all academic employees of the district possessed the required minimum qualifications for the work they performed.

SEC. 123. The heading of Article 6 (commencing with Section 87730) of Chapter 3 of Part 51 of the Education Code is amended to read:

Article 6. Termination of Services and Reduction in Force

SEC. 124. Section 87731 of the Education Code is amended to read·

87731. Whenever any academic employee of any community college district who, at the time of his or her resignation, was

classified as regular, is reemployed within 39 months after his or her last day of paid service, the governing board of the district shall, disregarding the break in service, classify him or her as, and restore to him or her all of the rights, benefits and burdens of, a regular employee, except as otherwise provided in this code; provided, that time spent in active military service, as defined in Section 87700, subsequent to the last day of paid service shall not count as part of the aforesaid 39-month period.

SEC. 125. Section 87732 of the Education Code is amended to read:

87732. No regular employee shall be dismissed except for one or more of the following causes:

(a) Immoral or unprofessional conduct.

(b) Any violation of Article 4 (commencing with Section 11400) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) Dishonesty.

(d) Incompetency.

(e) Evident unfitness for service.

(f) Physical or mental condition which makes him or her unfit to instruct or associate with students.

(g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.

(h) Conviction of a felony or of any crime involving moral turpitude.

(i) Conduct specified in Section 1028 of the Government Code.

SEC. 126. Section 87733 of the Education Code is amended to read:

87733. No report on the fitness of a faculty member in a dismissal proceeding shall be received from a statewide professional organization by a governing board unless the employee shall have been given, prior to the preparation of the report in its final form, the opportunity to submit in writing his or her comments on the report and unless a copy of the report in final form is given to the employee investigated at least 10 days prior to its submission to the board. The report shall not be distributed other than to the governing board and those persons participating in its preparation unless the employee does not demand a hearing as provided by law.

SEC. 127. Section 87735 of the Education Code is amended to read:

87735. Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a community college district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, or with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and

regulations of the employing district, the governing board may, if it deems such action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice, he or she will be dismissed, unless he or she demands a hearing.

SEC. 128. Section 87736 of the Education Code is amended to read:

87736. Whenever any academic employee of a community college district is charged with the commission of any sex offense, as defined in Section 87010, by complaint, information, or indictment filed in a court of competent jurisdiction, the governing board of the district may immediately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of the entry of the judgment in the proceedings. The governing board of the district may extend the compulsory leave of absence of the employee beyond such period by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in Section 87737.

Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence, if and during such time as the employee furnishes to the community college district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the district the amount of salary so paid to the employee during the period of the compulsory leave of absence in case the employee is convicted of such charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the district shall reimburse the employee for the cost of the bond upon his or her return to service in the district.

If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against the employee are dismissed, the district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the district.

Whenever any academic employee of a community college district is charged with the commission of any narcotics offense as defined, in Section 87011 of the Education Code, or a violation of Section 261.5 of the Penal Code, Sections 11357 to 11361, inclusive, 11363, 11364, or 11377 to 11382, inclusive, insofar as such sections relate to any controlled substances in paragraph (4) or (5) of subdivision (b) of Section 11056, or any controlled substances in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, of the Health and Safety Code, by complaint,

information, or indictment filed in a court of competent jurisdiction, the governing board of the district may immediately place the employee upon compulsory leave in accordance with the procedure in this section.

SEC. 129. Section 87737 of the Education Code is amended to read:

87737. The notice of suspension and intention to dismiss, shall be in writing and be served upon the employee personally or by United States registered mail addressed to the employee at his or her last known address. A copy of the charges filed, together with a copy of the provisions of Section 87736, shall be attached to the notice. If the employee demands a hearing within 30 days, the matter shall proceed to arbitration or hearing, as the case may be, as specified in Article 4. If the employee does not demand a hearing within the 30-day period, his or her dismissal shall be effective upon the expiration of 30 days after service of the notice.

SEC. 131. Section 87741 of the Education Code is amended to read:

87741. Unless a certificated employee holding a position requiring an administrative or supervisory credential is sent written notice deposited in the United States registered mail with postage prepaid and addressed to his last known address by March 15 that he or she may be released from his or her position for the following school year or unless the signature of the employee is obtained by March 15 on the written notice that he or she may be released from his or her position for the following year, he or she shall be continued in the position. The provisions of this section do not apply to a certificated employee who holds a written contract with an expiration date beyond the current school year, or to a certificated employee holding a position that is funded for less than a school year, or to a certificated employee assigned to an acting position whose continuing right to hold this position depends on his or her being selected from an eligible list established for the position, or to the termination of employment pursuant to Section 87743.

This section shall become inoperative on July 1, 1990, and as of January 1, next following its inoperative date this section is repealed unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 132. Section 87742 of the Education Code is repealed.

SEC. 133. The heading of Article 7 (commencing with Section 87760) of Chapter 3 of Part 51 of the Education Code is amended to read:

Article 7. Leaves of Absence

SEC. 134. Section 87760 of the Education Code is repealed.

SEC. 135. Section 87761 of the Education Code is repealed.

SEC. 136. Section 87763 of the Education Code is amended to read:

87763. Governing boards of community college districts may grant leaves of absence to persons employed in academic positions.

SEC. 137. Section 87764 of the Education Code is amended to read:

87764. When any provision of this code expressly authorizes or requires the governing board of a community college district to grant a leave of absence for any purpose or for any period of time to persons employed in academic positions, that express authorization or requirement does not deprive the governing board of the power to grant leaves of absence with or without pay to those employees for other purposes or for other periods of time, so long as the governing board does not deprive any employee of any leave of absence to which he is entitled by law.

SEC. 138. Section 87765 of the Education Code is amended to read:

87765. The governing board of a community college district may provide for the leave of absence from duty and may grant compensation during the leave of absence to any employee of the district who is employed in an academic position and who is compelled to absent himself or herself from his or her duties because of accident or illness, whether or not the cause of absence arises out of and in the course of the employment of the employee, or because of quarantine which results from his or her contact with other persons having a contagious disease while performing his or her duties, or because of temporary inability to perform the services required of him or her because of illness, accident, or quarantine.

SEC. 139. Section 87766 of the Education Code is amended to read:

87766. The governing board of a community college district shall provide for leave of absence from duty for any academic employee of the district who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom. The length of the leave of absence, including the date on which the leave shall commence and the date on which the employee shall resume duties, shall be determined by the employee and the employee's physician.

Disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment by any school district.

Except as provided herein, written and unwritten employment policies and practices of a community college district shall be applied to disability due to pregnancy or childbirth on the same terms and conditions applied to other temporary disabilities.

This section shall be construed as requiring the governing board of a community college district to grant leave with pay only when it is necessary to do so in order that leaves of absence for disabilities caused or contributed to by pregnancy, miscarriage, or childbirth be

treated the same as leaves for illness, injury, or disability.

SEC. 140. Section 87767 of the Education Code is amended to read:

87767. The governing board of a community college district may grant any employee of the district employed in an academic position, a leave of absence not to exceed one year for the purpose of permitting study or travel by the employee which will benefit the schools and students of the district. The governing board may provide that such a leave of absence be taken in separate six-month periods or separate quarters rather than for a continuous one-year period, provided that the leave of absence for both of the separate six-month periods or any or all quarters shall be commenced and completed within a three-year period. Any period of service by the individual intervening between the two separate six-month periods or separate quarters of the leave of absence shall comprise a part of the service required for a subsequent leave of absence.

SEC. 141. Section 87768 of the Education Code is amended to read:

87768. Notwithstanding any other provision of this code, the governing board of any community college district may grant a leave of absence under Section 87767 to any academic employee who has rendered service to the district for at least six consecutive years preceding the granting of the leave, but not more than one such leave of absence shall be granted in each six-year period. The governing board granting the leave of absence may prescribe the standards of service which shall entitle the employee to the leave of absence. No absence from the service of the district under a leave of absence, other than a leave of absence granted pursuant to Section 87767, granted by the governing board of the district shall be deemed a break in the continuity of service required by this section, and the period of the absence shall not be included as service in computing the six consecutive years of service required by this section. Service under a national recognized fellowship or foundation approved by the board of governors, for a period of not more than one year, for research, teaching or lecturing shall not be deemed a break in continuity of service, and the period of the absence shall be included in computing the six consecutive years of service required by this section.

SEC. 142. Section 87768.5 of the Education Code is amended to read:

87768.5. The governing board of a community college district shall grant to any employee, upon request, a leave of absence without loss of compensation for the purpose of enabling the employee to serve as an elected officer of any local community college district public employee organization, or of any statewide or national public employee organization with which the local organization is affiliated.

The leave shall include, but is not limited to, absence for purposes of attendance by the employee at periodic, stated, special, or regular meetings of the body of the organization on which the employee

serves as an officer. Compensation during the leave shall include retirement fund contributions required of the community college district as employer. Required retirement contributions shall include the amount necessary to pay any unfunded liability cost for the retirement plan. The employee shall earn full service credit during the leave of absence and shall pay member contributions as prescribed by Section 22804. The maximum amount of the service credit earned shall not exceed twelve calendar years. Any employee who serves as a full-time officer of a public employee organization shall not be eligible for disability benefits under the State Teachers' Retirement System while on the leave of absence.

Following the community college district's payment of the employee for the leave of absence, the community college district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave. Reimbursement by the employee organization shall be made within 10 days after its receipt of the community college district's certification of payment of compensation to the employee.

The leave of absence without loss of compensation provided for by this section is in addition to the released time without loss of compensation granted to representatives of an exclusive representative by subdivision (c) of Section 3543.1 of the Government Code.

SEC. 143. Section 87773 of the Education Code is amended to read:

87773. Where one governing board serves as the governing board of two or more separate districts, an employee may fulfill the service requirements provided in Section 87770, by service in any one or more of the districts under the jurisdiction of the governing board.

SEC. 144. Section 87775 of the Education Code is amended to read:

87775. Both the governing board of a community college district and the district shall be freed from any liability for the payment of any compensation or damages provided by law for the death or injury of any employee of the district employed in an academic position when the death or injury occurs while the employee is on any leave of absence granted under the provisions of Sections 87763 to 87779, inclusive.

SEC. 145. Section 87776 of the Education Code is amended to read:

87776. No leave of absence when granted to a contract employee shall be construed as a break in the continuity of service required for the classification of the employee as tenure. However, time spent on any unpaid leave of absence shall not be included in computing the service required as a prerequisite to attainment of, or eligibility for, tenure.

SEC. 146. Section 87779 of the Education Code is amended to read:

87779. When a community college or other place of employment shall have been transferred from one district to another, any academic employees who transfer with the school or other place of employment shall be entitled to retain all sickness and injury, sabbatical and other leave rights accumulated by service prior to the transfer and the district to which the school or other place of employment has been transferred shall recognize or grant those rights, including any accumulated rights allowed by the governing board of the district from which the school or other place of employment was transferred, as fully as if there had been no change in the district maintaining the school or other place of employment.

SEC. 147. Section 87780 of the Education Code is amended to read:

87780. When a person employed in an academic position is absent from his or her duties on account of illness or accident for a period of five school months or less, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any month in which the absence occurs shall not exceed the sum which is actually paid a temporary employee employed to fill his or her position during his or her absence or, if no temporary employee was employed, the amount which would have been paid to the temporary employee had he or she been employed. The community college district shall make every reasonable effort to secure the services of a temporary employee.

The governing board of every community college district shall adopt a salary schedule for temporary employees. The salary schedule shall indicate a salary for a temporary employee for all categories or classes of academic employees of the district.

Excepting in a district the governing board of which has adopted a salary schedule for temporary employees of the district, the amount paid the temporary employee during any month shall be less than the salary due the employee absent from his duties.

When a person employed in an academic position is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. These rules and regulations shall not conflict with rules and regulations of the board of governors.

Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for academic employees.

This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district

SEC. 148. Section 87781 of the Education Code is amended to

read:

87781. Every academic employee employed five days a week by a community college district shall be entitled to 10 days' leave of absence for illness or injury and such additional days in addition thereto as the governing board may allow for illness or injury, exclusive of all days he or she is not required to render service to the district, with full pay for a school year of service. A certificated employee employed for less than five schooldays a week shall be entitled, for a school year of service, to that proportion of 10 days' leave of absence for illness or injury as the number of days he or she is employed per week bears to five and is entitled to those additional days in addition thereto as the governing board may allow for illness or injury to certificated employees employed for less than five schooldays a week; pay for any day of such absence shall be the same as the pay which would have been received had the employee served during the day. Credit for leave of absence need not be accrued prior to taking leave by the employee and the leave of absence may be taken at any time during the school year. If the employee does not take the full amount of leave allowed in any school year under this section the amount not taken shall be accumulated from year to year with additional days as the governing board may allow.

The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purposes of this section. These rules and regulations shall not discriminate against evidence of treatment and the need therefor by the practice of the religion of any well-recognized church or denomination.

Nothing in this section shall be deemed to modify or repeal any provision of law contained in Chapter 3 (commencing with Section 3110) of Division 4 of the Health and Safety Code.

The provisions of Section 87780 relating to compensation shall not apply to the first 10 days of absence on account of illness or accident of any employee employed five days a week or to the proportion of 10 days of absence to which the employee employed less than five days a week is entitled hereunder on account of illness or accident or to additional days granted by the governing board. Any employee shall have the right to utilize sick leave provided for in this section and the benefit provided by Section 87780 for absences necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.

SEC. 149. Section 87781.5 of the Education Code is amended to read:

87781.5. The governing board of a community college district may adopt rules permitting academic employees of the district to use leave earned pursuant to Section 87781 in cases of compelling personal importance.

Leave taken pursuant to this section, together with any leave taken pursuant to Section 87784, shall not exceed six days in any single school year.

SEC. 150. Section 87782 of the Education Code is amended to

read:

87782. Any academic employee of a community college district who has been an employee of that district for a period of one school year or more and who accepts an academic position in a school district or community college district at any time during the second or any succeeding school year of his or her employment with the first district, or who, within the school year succeeding the school year in which the employment is terminated, signifies acceptance of his or her election or employment in an academic position in another district, shall have transferred with him or her to the second district the total amount of leave of absence for illness or injury to which he or she is entitled under Section 87781. The board of governors shall adopt rules and regulations prescribing the manner in which the first district shall certify to the second district the total amount of leave of absence for illness or injury to be transferred. No governing board shall adopt any policy or rule, written or unwritten, which requires any employee transferring to its district to waive any part or all of the leave of absence which he or she may be entitled to have transferred in accordance with this section.

SEC. 151. Section 87783 of the Education Code is amended to read:

87783. Any academic employee of a community college district who accepts a position requiring certification qualifications in the office of any county superintendent of schools; or, any certificated employee of any county superintendent of schools who accepts an academic position in a community college district or office of another county superintendent of schools; or, any person employed by the board of governors in a position requiring certification qualifications or an employee of the office of the Chancellor of the California Community Colleges who accepts an academic position in a community college district or a position requiring certification qualifications in the office of any county superintendent of schools; or, any certificated employee of the Commission for Teacher Preparation and Licensing who accepts an academic position in any community college district; shall have transferred with him or her to the second position his or her accumulated leave of absence for illness or injury. The amount of leave to be transferred shall be determined in the same manner as provided in Section 87782. All other provisions of Section 87782 shall also apply to the employees and employers described in this section.

SEC. 152. Section 87785 of the Education Code is amended to read:

87785. Any person employed by a community college district, in an academic position who accepts a professional education position in the chancellor's office of the California community colleges, the appointment to which is, or is intended to become, permanent, shall have transferred with him or her to the chancellor's office of the California community colleges his accumulated leave of absence for illness or injury. The amount of leave to be transferred shall be

determined in the same manner as provided in Section 87782, except in no case may the transferred accumulated sick leave exceed that amount of accumulated sick leave that the person would have earned as an employee in the system to which he or she is transferring. All other provisions of Section 87782 shall also apply to the employees and employers described in this section.

SEC. 153. Section 87786 of the Education Code is amended to read:

87786. Section 87780 shall not apply to any community college district which adopts and maintains in effect a rule which provides that when a person employed in an adacemic position is absent from his or her duties on account of illness or accident for a period of five school months or less whether or not the absence arises out of or in the course of the employment of the employee, he or she shall receive 50 percent or more of his or her regular salary during the period of the absence and nothing in Section 87780 shall be construed as preventing the governing board of any district from adopting any such rule.

Notwithstanding the foregoing, when a person employed in an academic position is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. These rules and regulations shall not conflict with rules and regulations of the board of governors.

Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for academic employees.

This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

SEC. 154. Section 87787 of the Education Code is amended to read:

87787. Governing boards of community college districts shall provide by rules and regulations for industrial accident and illness leaves of absence for all academic employees. The governing board of any district which is created or whose boundaries or status is changed by an action to organize or reorganize districts completed after January 1, 1976, shall provide by rules and regulations for such leaves of absence on or before the date on which the organization or reorganization of the district becomes effective for all purposes as provided in Section 4064.

The rules or regulations shall include the following provisions:

(a) Allowable leave shall be for not less than 60 days during which the schools of the district are required to be in session or when the employee would otherwise have been performing work for the

district in any one fiscal year for the same accident.

(b) Allowable leave shall not be accumulated from year to year.

(c) Industrial accident or illness leave shall commence on the first day of absence.

(d) When an academic employee is absent from his or her duties on account of an industrial accident or illness, he or she shall be paid the portion of the salary due him for any month in which the absence occurs as, when added to his or her temporary disability indemnity under Division 4 or Division 4.5 (commencing with Section 6100) of the Labor Code, will result in a payment to him or her of not more than his or her full salary.

The phrase "full salary" as utilized in this subdivision shall be computed so that it shall not be less than the employee's "average weekly earnings" as that phrase is utilized in Section 4453 of the Labor Code. For purposes of this section, however, the maximum and minimum average weekly earnings set forth in Section 4453 of the Labor Code shall otherwise not be deemed applicable.

(e) Industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.

(f) When an industrial accident or illness leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused leave due him or her for the same illness or injury.

Upon termination of the industrial accident or illness leave, the employee shall be entitled to the benefits provided in Sections 87780, 87781 and 87786, and for the purposes of each of these sections, his or her absence shall be deemed to have commenced on the date of termination of the industrial accident or illness leave, provided that if the employee continues to receive temporary disability indemnity, he or she may elect to take as much of his or her accumulated sick leave which, when added to his or her temporary disability indemnity, will result in a payment to him of not more than his or her full salary.

The governing board may, by rule or regulation, provide for additional leave of absence for industrial accident or illness as it deems appropriate.

During any paid leave of absence, the employee may endorse to the district the temporary disability indemnity checks received on account of his or her industrial accident or illness. The district, in turn, shall issue the employee appropriate salary warrants for payment of the employee's salary and shall deduct normal retirement, other authorized contributions, and the temporary disability indemnity, if any, actually paid to and retained by the employee for periods covered by the salary warrants.

Any employee receiving benefits as a result of this section shall, during periods of injury or illness, remain within the State of California unless the governing board authorizes travel outside the state.

In the absence of rules and regulations adopted by the governing

board pursuant to this section an employee shall be entitled to industrial accident or illness leave as provided in this section but without limitation as to the number of days of leave.

SEC. 155. Section 87788 of the Education Code is amended to read:

87788. Every person employed by a community college district in an academic position is entitled to a leave of absence, not to exceed three days, or five days if out-of-state travel is required, on account of the death of any member of his or her immediate family. No deduction shall be made from the salary of the employee or shall the leave be deducted from leave granted by other sections of this code or provided by the governing board of the district. The governing board may enlarge the benefits of this section and may expand the class of relatives listed below as members of the immediate family. Members of the immediate family, as used in this section, means the mother, father, grandmother, grandfather, or a grandchild of the employee or of the spouse of the employee, and the spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister of the employee, or any relative living in the immediate household of the employee.

SEC. 156. Section 87789 of the Education Code is amended to read:

87789. The governing board of a community college district may grant a leave of absence to any academic employee who has applied for disability allowance, not to exceed 30 days beyond final determination of the disability allowance by the State Teachers' Retirement System. If the employee is determined to be eligible for the disability allowance by the system, the leave shall be extended for the term of disability, but not more than 39 months.

Governing boards of community college districts shall classify as temporary employees those persons employed to fill vacancies caused by the absence of academic employees who are classified as permanent and are receiving a disability or insurance allowance or benefit from the system or from a group insurance plan for which the employer is paying the cost or deducting the cost from the employees' salaries.

For purposes of this section, the term of employment of the temporary employee shall be equal to the number of days of absence of the employee receiving the disability allowance.

If the term of employment extends beyond this period, the employee shall be credited for all days served as a probationary employee.

SEC. 157. Section 87801 of the Education Code is amended to read:

87801. The governing board of a community college district shall fix and order paid the compensation of persons employed by the board as academic employees unless otherwise prescribed by law.

SEC. 158. Section 87802 of the Education Code is amended to read:

87802. The governing board of each community college district shall adopt and cause to be printed and made available to each academic employee a schedule of salaries to be paid.

SEC. 159. Section 87803 of the Education Code is repealed.

SEC. 160. Section 87806 of the Education Code is amended to read:

87806. The governing board of a community college district may at any time during any school year increase the salaries of persons employed by the district in academic positions. The increase shall be effective on any date ordered by the governing board.

SEC. 161. Section 87807 of the Education Code is amended to read:

87807. The governing board of community college district shall not decrease the annual salary of a person employed by the district in an academic position for failure to meet any requirement of the district that the person complete additional educational units, course of study, or work in any college or university or any equivalent thereof.

SEC. 162. Section 87808 of the Education Code is repealed.

SEC. 163. Section 87809 of the Education Code is amended to read:

87809. If a community college district fails to pay the salary of any person employed by it in an academic position who has on file a contract of employment held valid by the legal adviser of the county superintendent of schools having jurisdiction over the district, that county superintendent of schools may transfer sufficient money from the funds of the district to the county school service fund and pay the salary from that fund.

SEC. 164. Section 87810 of the Education Code is amended to read:

87810. Whenever a person has rendered service in an academic position, or the governing board of a district has employed a person in an academic position or the county superintendent has drawn an order for a warrant in favor of a person in an academic position, for a period of service during which the person did not have the qualifications required for the position as required by law, and when as a result thereof the employment of the person to render the service, the rendering of the service, the inclusion of the attendance of students taught by the person in the average daily attendance of the district, or the drawing of the order warrant for the service of that person, is in violation of any provision of this code, the employment, rendering of service, inclusion of attendance, or drawing of the order for the warrant shall be deemed fully legal for all purposes if the board of governors approves thereof in accordance with this section.

The board of governors shall adopt rules and regulations to establish procedures for a review in those cases and shall determine whether the rendering of the service shall be approved and made fully legal for all purposes. If the board gives its approval to the

rendering of such service, then the employment, inclusion of attendance, and drawing of the order for the warrant shall be automatically approved and made fully legal for all purposes.

Unless and until amended by the board of governors, the regulations shall provide that the rendering of the service shall be approved if either of the following circumstances apply:

(a) The board determines that the person rendering the service had the necessary qualifications during the period of service in question.

(b) The district governing board determines, through a process that meets the requirements of Section 87359, and based on reasonable evidence, that the person rendering the service had qualifications that are at least equivalent to the qualifications specified in regulations of the board of governors.

SEC. 165. Section 87815 of the Education Code is amended to read:

87815. A person in an academic position who serves less than a full school year shall receive as salary only an amount that bears the same ratio to the established annual salary for the position as the number of working days he or she serves bears to the total number of working days plus institutes in the annual school term, and any other day when the employee is required by the governing board to be present at the schools of the district. Notwithstanding any provisions of this section to the contrary, a person in an academic position who serves a complete semester shall receive not less than one-half of the established annual salary for the position. This section shall not be so construed as to prevent the payment of compensation to a person while on leave of absence when the payment of the compensation is authorized by law.

In the event any such person dies during the school year, his or her estate shall be entitled to receive, as salary owed to the decedent, an amount that bears the same ratio to the established annual salary for the position as the number of working days he or she served bears to the total number of working days plus institutes in the annual school term, and any other day when the employee was required by the governing board to be present at the schools of the district, less any salary paid to the decedent prior to his or her death.

SEC. 166. Section 87816 of the Education Code is amended to read.

87816. Notwithstanding the provisions of Section 87815, the governing board of a community college district may adopt an alternative method of computing the salary received by an academic employee who serves less than a full school year.

The alternative method shall include the deduction from the employee's regular salary of only that amount actually paid to a substitute or, if a substitute is not employed, the amount which would have been paid to a substitute had a substitute been employed.

For the purposes of this section, the amount which would have been paid to a substitute is that amount established by the district in

a published salary schedule for substitute employees.

The alternative method shall only be applied upon authorization by the community college board based upon individual employee application and shall be limited to no more than five days per school year for each employee.

SEC. 167. Section 87817 of the Education Code is amended to read:

87817. Notwithstanding the provisions of Section 87815 or any other provision of law to the contrary, if a person is employed by a community college district in an academic position at the beginning of the second semester of a school year for services during that semester, the compensation of the employee shall be not less than one-half of the annual compensation for that position.

SEC. 168. Section 87818 of the Education Code is amended to read:

87818. Whenever a salary schedule increasing the salaries of its academic employees is adopted by a community college district to be effective at the commencement of the second semester of a school year:

(a) The compensation of the employees shall not exceed one-half of the annual compensation for their positions under the former salary schedule for services during the first semester.

(b) The compensation of the employees shall not be less than one-half of the annual compensation for their positions under the newly adopted salary schedule for services during the second semester.

This section shall not be construed to limit the time at which any salary increase ordered by the governing board shall become effective.

SEC. 169. Section 87820 of the Education Code is repealed.

SEC. 170. Section 87821 of the Education Code is amended to read:

87821. Each salary payment for any calendar month may be made on the last working day of the month and shall be paid not earlier than the last working day of the month and not later than the fifth day of the succeeding calendar month except that faculty employed for less than full time in classes for adults, in a day or evening community college, shall be paid on or before the 10th day of the succeeding calendar month for services performed during the preceding calendar month.

If the community college district provides for the payment of the salary of employees employed in academic positions once each two weeks, twice a month, or once each four weeks, each salary payment may be made on the last working day of the payroll period and shall be made not earlier than the last working day of the payroll period and not later than the eighth working day of the following payroll period.

This section shall not prohibit a district from making a payment of earned salary prior to the last working day of the month or payroll

period.

SEC. 171. Section 87822 of the Education Code is amended to read:

87822. Except as provided in Section 87790, when any community college district employs an academic employee to perform instruction or other services in addition to his or her regular instructing duties, or when a district employs an academic employee to perform instructing or other services at a summer school maintained by the district, the district shall pay the employee for those services either in one lump sum or at an hourly, daily, biweekly, quadriweekly, or monthly rate of pay. If the pay is in one lump sum, the district shall pay the employee within 10 days after the termination of the services. If the pay is at an hourly, daily, biweekly, quadriweekly or monthly rate, the district shall pay the employee within 10 days after the end of each calendar month or pay period during which the services are performed.

SEC. 172. Section 87828 of the Education Code is amended to read:

87828. Except as otherwise provided in this code, no warrant shall be drawn in favor of any academic employee, unless the officer whose duty it is to draw the warrant is satisfied that the employee has faithfully performed all the duties prescribed.

SEC. 173. Section 87831 of the Education Code is amended to read:

87831. Whenever reports are required to be filed with the county superintendent of schools by academic employees of districts authorized to issue warrants under the provision of Section 85266 and the reports have not been filed, the county superintendent of schools may direct the district in writing to withhold the salary payment due the employee involved. The payment should not be released to the employee until directed in writing by the county superintendent of schools.

SEC. 174. Section 87832 of the Education Code is amended to read:

87832. For the purposes of Military and Veterans Code Section 395 or any other provision of law providing for the payment of salary or compensation as such employee to an employee of a community college district while absent from duty because engaged in ordered military or naval duty, his salary or compensation as such employee for 30 days shall (a) with respect to an employee serving in an academic position be deemed to be one-tenth of the annual salary established for the position and (b) with respect to an employee serving in a position not requiring certification qualifications be deemed to be one month's salary.

SEC. 175. Section 87833 of the Education Code is amended to read:

87833. Except as provided in Section 87834, the governing board of each community college district, when drawing an order for the salary payment due to an academic employee of the district, shall

with or without charge reduce the order by the amount which the board has been requested in a revocable written authorization by the employee to deduct for the purpose of paying the dues of the employee for membership in any local professional organization, or in any statewide professional organization, or in any other professional organization affiliated or otherwise connected with a statewide professional organization which authorizes the statewide organization to receive membership dues on its behalf and for the purpose of paying his or her pro rata share of the costs incurred by the district in making the deduction. No charge shall exceed the actual cost to the district of the dues deduction. Any revocation of a written authorization shall be in writing and shall be effective commencing with the next pay period.

Unless otherwise provided in an agreement negotiated pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the governing board shall, no later than the 10th day of each pay period for academic employees, draw its order upon the funds of the district in favor of the organization designated by the employee for an amount equal to the total of the dues deductions made with respect to that organization for the previous pay period and shall transmit the total amount to that organization no later than the 15th day of each pay period for academic employees. When timely transmittal of dues payments by a county is necessary for a community college district to comply with the provisions of this section, the county shall act in a timely manner. If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of dues, the board shall deduct from the amount transmitted to the organization on whose account the dues payments were deducted the actual costs of making the deduction.

The revocable written authorization shall remain in effect until expressly revoked in writing by the employee. Whenever there is a change in the amount required for the payment to the organization, the employee organization shall provide the employee with adequate and necessary data on the change at a time sufficiently prior to the effective date of the change to allow the employee an opportunity to revoke the written authorization, if desired. The employee organization shall provide the public school employer with notification of the change at a time sufficiently prior to the effective date of the change to allow the employer an opportunity to make the necessary adjustments and with a copy of the notification of the change which has been sent to all concerned employees.

The governing board shall not require the completion of a new deduction authorization when a dues change has been effected or at any other time without the express approval of the concerned employee organization.

SEC. 176. Section 87834 of the Education Code is amended to read:

87834. The governing board of each community college district

when drawing an order for the salary or wage payment due to an academic employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required in an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or recognized employee organization in lieu of having the service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certificated or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These actual costs shall be determined by the board and shall include startup and ongoing costs.

SEC. 177. Section 88000 of the Education Code is amended to read:

88000. Article 1 (commencing with Section 88000), Article 2 (commencing with Section 88050), Article 4 (commencing with Section 88160), Article 5 (commencing with Section 88180), Article 6 (commencing with Section 88190), and Article 8 (commencing with Section 88240), and Chapter 1 (commencing with Section 87000) shall apply to all classified employees of a community college district, including those authorized in Section 72419 whether a merit or nonmerit system district as authorized by this chapter unless the section specifically limits its application to nonmerit system districts.

These provisions shall not apply to employees of a community college district lying wholly within a city and county which provides in its charter for a merit system of employment for employees employed in positions that are part of the classified service.

The positions authorized in Section 72419 may, by resolution of a governing board, be exempted from the provisions of Article 3 (commencing with Section 88060).

SEC. 178. Section 88003 of the Education Code is amended to read:

88003. The governing board of any community college district shall employ persons for positions that are not academic positions. The governing board shall, except where Article 3 (commencing with Section 88060) of this chapter or Section 88137 applies, classify all such employees and positions. The employees and positions shall be known as the classified service. Substitute and short-term employees, employed and paid for less than 75 percent of a school year, shall not be a part of the classified service. Part-time playground positions, apprentices and professional experts

employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service. Full-time students employed part time, and part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district pursuant to Article 4 (commencing with Section 78240) of Chapter 2 of Part 48 of this division and which is financed by state or federal funds, shall not be a part of the classified service.

"Substitute employee," as used in this section, means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

"Short-term employee," as used in this section, means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis.

"Seventy-five percent of a school year" means 195 working days, including holidays, sick leave, vacation and other leaves of absences, irrespective of number of hours worked per day.

Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060) of this chapter.

SEC. 179. Section 88004 of the Education Code is amended to read:

88004. Every position not defined by the regulations of the board of governors as an academic position and not specifically exempted from the classified service according to the provisions of Section 88003 or 88076 shall be classified as required by those sections and shall be a part of the classified service. These positions may not be designated as academic by the governing board of a district nor shall the assignment of a title to any such a position remove the position from the classified service.

Nothing in this section shall be construed to prohibit anyone from being employed in a classification because he or she possesses the minimum qualifications required of faculty members or academic administrators, nor shall the possession of those qualifications be grounds for the elimination of an individual from consideration for employment in a classified position.

This section shall apply to districts which have adopted the merit system in the same manner and with the same effect as though it

were a part of Article 3 (commencing with Section 88060) of this chapter.

SEC. 180. Section 88005 of the Education Code is amended to read:

88005. (a) Nonacademic positions created by a governing board of a school district under the Manpower Development and Training Act of 1962, the Economic Opportunity Act of 1964, the Elementary and Secondary Education Act of 1965, or Section 11300 or Section 13650 of the Welfare and Institutions Code, any future federal or state legislative enactment, or any other special funding, and which are not a part of the regular school program shall, nevertheless, be a part of the classified service as established by Section 88003 or Section 88076 of this code.

Persons employed in such positions shall be classified employees and shall enjoy all the rights, burdens and benefits accorded other classified employees. Their selection and retention shall be made on the same basis as that of persons selected for positions that are a part of the regular school program.

(b) Notwithstanding the provisions of subdivision (a), if specially funded positions are restricted to employment of persons in low-income groups, from designated impoverished areas and other criteria which restricts the privilege of all citizens to compete for employment in such positions, all such positions shall, in addition to the regular class title, be classified as "restricted." Their selection and retention shall be made on the same basis as that of persons selected and retained in positions that are a part of the regular school program, except that persons employed in the following categories of restricted positions shall not be subject to the provisions of Section 88091 or 88092:

(1) The position of instructional aide, as defined in Section 88243.

(2) Any other position involving personal contacts with students or parents that is established to assist school-staff personnel responsible for school-community relations; educational support services for such areas as counseling, library or health; or the correction or prevention of behavioral problems.

Persons employed in positions properly classified as "restricted" shall be classified employees for all purposes except:

(A) They shall not be accorded employment permanency under Section 88013 or Section 88120 of the Education Code, whichever is applicable.

(B) They shall not acquire seniority credits for the purposes of Sections 88117 and 88127 of the Education Code or, in a district not having the merit (civil service) system, for the purposes of layoff for lack of work or lack of funds as may be established by rule of the governing board.

(C) The provisions of Sections 88106 and 88108 shall not apply to "restricted" employees.

(D) They shall not be eligible for promotion into the regular classified service or, in districts that have adopted the merit system,

shall not be subject to the provisions of Section 88061, until they have complied with the provisions of subdivision (c).

(c) At any time, after completion of six months of satisfactory service, a person serving in a "restricted" position shall be given the opportunity to take such qualifying examinations as are required for all other persons serving in the same class in the regular classified service. If the person satisfactorily completes the qualifying examination, regardless of final numerical listing on an eligibility list, he or she shall be accorded full rights, benefits and burdens of any other classified employee serving in the regular classified service. His or her service in the regular classified service shall be counted from the original date of employment in the "restricted" position and shall continue even though he or she continues to serve in a "restricted" position.

(d) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

(e) It is the intent of the Legislature in enacting this section to clearly set forth that positions normally a part of the classified service are included therein regardless of the source of income to sustain the positions and to effectively implement specially funded programs intended to provide job opportunities for untrained and impoverished persons but to do so in a manner that will not be disruptive nor detrimental to the normal employment procedures relating to classified school service.

SEC. 181. Section 88009 of the Education Code is amended to read:

88009. Governing boards shall fix and prescribe the duties to be performed by all persons in the classified service and other nonacademic positions of the community college district, except those persons employed as a part of a personnel commission staff as provided in Article 3 (commencing with Section 88060) of this chapter.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

SEC. 182. Section 88013 of the Education Code is amended to read:

88013. The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year.

Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's

determination of the sufficiency of the cause for disciplinary action shall be conclusive.

The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him, a statement of his right to a hearing on such charges, and the time within which such hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060) of this chapter.

SEC. 183. Section 88018 of the Education Code is amended to read:

88018. Any division, uniting, unionization, annexation, merger, or change of community college district boundaries shall not affect the rights of persons employed in nonacademic positions to continue in employment for not less than two years and to retain the salary, leaves and other benefits which they would have had had the reorganization not occurred, and in the manner provided in this article:

(a) All employees of every community college district which is included in any other district, or all districts included in a new district, shall become employees of the new district.

(b) When a portion of the territory of any district becomes part of another district employees regularly assigned to perform their duties in the territory affected shall become employees of the acquiring district. Employees whose assignments pertained to the affected territory, but whose employment situs was not in such territory, may elect to remain with the original district or become employees of the acquiring district.

(c) When the territory of any district is divided between or among two or more districts and the original district ceases to exist, employees of the original district regularly assigned to perform their duties in any specific territory of such district shall become employees of the district acquiring the territory. Employees not assigned to specific territory within the original district shall become employees of any acquiring district at their election.

(d) Employees regularly assigned by the original district to any school in said district shall be an employee of the district in which

said school is located. Except as herein provided, nothing herein shall deprive the governing board of the acquiring district from making reasonable reassignments of duties.

SEC. 184. Section 88024 of the Education Code is amended to read:

88024. The governing board of any community college district shall, within 10 working days of date of employment, require each person to be employed, or employed in, a nonacademic position to have two 8" x 8" fingerprint cards bearing the legible rolled and flat impressions of such person's fingerprints together with a personal description of the applicant or employee, as the case may be, prepared by a local public law enforcement agency having jurisdiction in the area of the district, which agency shall transmit the cards, together with the fee hereinafter specified, to the Department of Justice; except that a district, or districts with a common board, having an average daily attendance of 60,000 or more may process the fingerprint cards in the event the district so elects. "Local public law enforcement agency" as used herein and in Section 88025 includes a community college district with an average daily attendance of 60,000 or more. Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant or employee has been arrested or convicted of any crime insofar as such fact can be ascertained from information available to the department and forward that information to the local public law enforcement agency submitting the applicant's or employee's fingerprints at the earliest possible date. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant or employee.

The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees who have not completed the requirements of this section. The Department of Justice shall direct when the cards are to be forwarded to it for processing which in no event shall be later than two years from the date of enactment of this section. Districts which have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

The governing board shall provide the means whereby the identification cards may be completed and shall charge a fee

determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice, with two copies of applicant's or employee's fingerprint cards. The governing board may collect an additional fee not to exceed two dollars ($2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. The additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, the fee may be reimbursed to the applicant. Funds not reimbursed applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

Notwithstanding the foregoing, substitute and temporary employees, employed for less than a school year, may be exempted from these provisions. The provisions of this section shall not apply to a district, or districts with a common board, which has an average daily attendance of 400,000 or greater, or to a community college district wholly within a city and county, unless the governing board of such district or districts, by rule, provides for adherence to this section.

SEC. 185. Section 88061 of the Education Code is amended to read:

88061. In any district in which the procedure set forth in this article has been incorporated the governing board shall employ, pay, and otherwise control the services of persons in nonacademic positions in accordance with the provisions of this article.

No governing board shall remove a position from the classified service by title assignment or otherwise unless the position is one for which minimum qualifications have been established by the board of governors pursuant to Section 87356.

SEC. 186. Section 88063.5 of the Education Code is amended to read:

88063.5. Notwithstanding Section 88063, in the case of a unified district and a community college district which are under the jurisdiction of governing boards of identical personnel and which had a majority of their population within an incorporated city which had a population between 70,000 and 75,000 as of the 1950 census, the governing board may, by affirmative vote of the majority of its members, elect to make the provisions of this article applicable to each of the districts individually and separately. In such cases, the expenses of the commission shall be paid out of general funds of the districts in proportion to the benefits derived therefrom as determined by the governing board.

In the case of action by the governing board to make the provisions

of this article applicable to each of the districts individually and separately, and notwithstanding any other provision of law, the rights of persons employed in nonacademic positions shall continue in the same manner as if the separation had not occurred, except that the rights shall be limited to the district in which the person is employed on the day such action is taken by the governing board. For purposes of determining seniority, employment shall be deemed to have commenced as of the date of original employment in either the unified district or the community college district.

SEC. 187. Section 88065 of the Education Code is amended to read:

88065. One member of the commission shall be appointed by the governing board of the district and one member, nominated by the classified employees of the district, shall be appointed by the governing board of the district. Those two members shall, in turn, appoint the third member.

As used in this section, "classified employees" shall mean an exclusive representative which represents the largest number of classified employees in a unit or units within the district. If there is no such exclusive representative within the district the governing board shall, by written rule, prescribe the method by which the recommendation is to be made by its classified employees.

In any community college district which has a five-member personnel commission, two members of the commission shall be appointed by the governing board of the district and two members, nominated by the classified employees of the district, shall be appointed by the governing board of the district. Those four members of the personnel commission shall, in turn, appoint the fifth member to the commission.

SEC. 188. Section 88076 of the Education Code is amended to read:

88076. (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those which are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

(b) Exempt from the classified service shall be:

(1) Academic positions.

(2) Part-time playground positions.

(3) Full-time students employed part time.

(4) Part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district pursuant to Article 4 (commencing with Section 78240) of Chapter 2 of Part 48 of this division and which is financed by state or federal funds.

(5) Apprentice positions.

(6) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board or by the commission when so designated by the commission.

Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

However, nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provisions of this law.

No person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above shall be employed outside the classified service.

A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than 87½ percent of the normally assigned time of the majority of employees in the classified service.

SEC. 189. Section 88090 of the Education Code is amended to read:

88090. Any employee serving in an academic position whose position is by virtue of change of law deemed to be in the classified service shall without examination become a member of the classified service in accordance with the terms of Sections 88088 and 88089. Full seniority rights shall be retained, except that no seniority credit shall be allowed by virtue of previous academic service in case of layoff for lack of funds or lack of work.

Any employee serving in a classified position whose position is by virtue of change of law deemed to be an academic position shall without examination become an academic employee and shall be deemed to have the necessary qualifications for the position. Full seniority rights will be retained, except that no seniority credit will be allowed by virtue of previous classified service in case of layoff for lack of funds or lack of work. Any such person who has been continuously employed in a regular position in the classified service for the length of time necessary to acquire permanency as a faculty member shall, if employed as a faculty member, be deemed to be tenured. Any such person serving in a regular position in the classified service for an amount of time less than that necessary to acquire faculty tenure shall be a probationary employee of the district; such regular classified service shall be considered as probationary service toward the attainment of tenure as a faculty member.

SEC. 190. Section 88099 of the Education Code is amended to read:

88099. The commission shall, by rule, provide for an open competitive examination and a promotional examination to be held

at the same time for the position of business manager or for any other single position class which it declares to be at or above the level of business manager. It shall require that all educational and work experience requirements be developed to fit the needs of the position in such a manner that the position will attract competent and qualified applicants from within the classified service, among academic personnel, or other persons meeting the minimum requirements established for the position.

Such rule shall provide: (a) that all permanent employees of the district, classified and academic, who meet the established minimum qualifications, shall be eligible to compete in the examination as promotional candidates; (b) that promotional credits, including seniority credits, if any, shall be equally applicable to both classified and academic promotional candidates; (c) that eligibility lists resulting from such an open competitive and promotional examination shall be merged according to the order of the examination scores into a single eligibility list, after the scores of each candidate on the promotional list have been adjusted for promotional credits, including seniority credits, if any; and (d) that the examination for any such position shall not be construed to be an entrance level position examination.

SEC. 191. Section 88100 of the Education Code is amended to read:

88100. The commission may by rule provide for the competition of academic employees of the governing board in promotional examinations for positions in the classified service.

SEC. 192. Section 88101 of the Education Code is amended to read:

88101. The commission shall, by rule, provide for an open competitive examination and a promotional examination to be held at the same time for the positions that existed or could be created, when the positions become available for competitive examination, under the provisions of subdivisions (m), (n), and (o) of former Section 13055 as those subdivisions existed prior to their repeal by action of the 1965 General Session of the Legislature.

The rule shall provide: (a) that all permanent employees of the district, classified and academic, who meet the established minimum qualifications, shall be eligible to compete in the examination as promotional candidates; (b) that promotional credits, including seniority credits, if any, shall be equally applicable to both classified and academic promotional candidates; (c) that eligibility lists resulting from such an open competitive and promotional examination shall be merged according to the order of the examination scores into a single eligibility list, after the scores of each candidate on the promotional list have been adjusted for promotional credits, including seniority credits, if any; and (d) that the examination for any such position shall not be construed to be an entrance level position examination.

SEC. 193. Section 88137 of the Education Code is amended to

read:

88137. In every community college district coterminous with the boundaries of a city and county, employees employed in nonacademic positions shall be employed, if the city and county has a charter providing for a merit system of employment, pursuant to the provisions of the charter providing for the system and shall, in all respects, be subject to, and have all rights granted by, those provisions; provided, however, that the governing board of the district shall have the right to fix the duties of all of its employees.

SEC. 194. Section 88138 of the Education Code is amended to read:

88138. A merit (civil service) system within a community college district may be terminated by one of the following methods:

(a) If the governing board of a community college district, receives a written petition of qualified electors not less in number than 10 percent of the number voting in the last election for a member of the board calling for the termination of the merit (civil service) system and the system has been in operation for not less than five years, the board shall order the county superintendent of schools to place the question of termination of the system on the ballot at the next regular governing board member election, or the next primary or general election in a general election year, whichever is the earlier after receipt by the county superintendent of schools.

The statement of purpose of the election shall read:

"Shall the merit (civil service) system for school employees not employed as faculty or educational administrators, as provided for in Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of Division 7 of Title 3 of the Education Code of the State of California, and which has been in operation for at least five years, be terminated by the _____ Community College District of _____ County (or counties, where appropriate) on _____ (date to be specified by board)?"

The petition calling for the election, to be valid, shall contain the statement of purpose for the election as contained in this section.

(b) If the governing board of a community college district receives a written petition from 40 percent of the classified employees entitled to vote calling for the termination of the merit (civil service) system and the system has been in operation for not less than five years or has been imposed pursuant to the terms of Section 45119 or 45120, the governing board shall conduct an election by secret ballot of its classified personnel to determine whether or not they desire to have the merit system terminated within the district. The ballot shall read: "Shall the merit (civil service) system for classified employees be terminated in the _____ (name of community college district) as of _____ (termination date)?"

As used in this subdivision, "classified employees" means all personnel who are a part of the classified service who are appointed in accordance with Section 88091.

In order to be valid, the petition calling for the termination of the merit (civil service) system must be submitted to the governing board of a community college district within 90 days after the date that the notice for the circulation of the petition was filed with the governing board of the community college district. The election shall be held during the regular academic year and shall be held no earlier than 45 days and no later than 180 days after the date that the petition was submitted to the governing board.

If the merit system was adopted pursuant to Section 88057, classified employees entitled to vote in an election pursuant to this subdivision shall be limited to those classified employees who reside in the district.

(c) The governing board of a community college district shall devise an identification system designed to protect against fraud in the balloting process. In addition, the governing board shall appoint a three-member tabulation committee consisting of one member of the governing board, one member of the personnel commission of the community college district, and one member who shall be a classified employee of the community college district. It shall be the responsibility of the tabulation committee to canvass the election ballots and to certify the results of the election to the governing board at the next regular meeting of the governing board following the completion of the tabulation of the election results by the committee.

(d) Notwithstanding any other provision of law, the governing board of a community college district shall not be required to provide release time for classified personnel to vote in an election conducted pursuant to subdivision (b) The governing board shall not conduct an election under subdivision (b) more than once in any two-year period.

(e) It shall be unlawful for a public school employer and the exclusive representative of the classified employees of a community college district to include the subject of the termination of the merit (classified service) system within the scope of representation.

(f) It is the intent of the Legislature that members of the classified service shall be provided an adequate and ample opportunity to be informed of the arguments in favor of and in opposition to the termination of the merit (classified service) system prior to the conducting of an election called pursuant to subdivision (b).

SEC. 195. Section 88160 of the Education Code is amended to read:

88160. The governing board of any community college district, including city boards of education, shall fix and order paid the compensation of persons a part of the classified service and other nonacademic employees employed by the board unless otherwise prescribed by law.

SEC. 196. Section 88162 of the Education Code is amended to read:

88162. (a) The governing board of any community college

district shall, not later than the date prescribed by law for approval of the publication budget of every year, fix the annual salaries for the ensuing school year for all persons employed by the district in nonacademic positions. The governing board may, at the time, include an increase in those annual salaries, all or part of which increase is conditional upon the actual receipt by the district of anticipated revenue from all sources. If the revenue actually received is less than that anticipated, the governing board may, at any time during the school year, reduce those annual salaries by an amount not to exceed the amount which was granted subject to the receipt of such revenues.

(b) The governing board of a community college district may, at any time during the school year, increase the salaries of persons employed by the district in nonacademic positions. The increase shall be effective on any date ordered by the governing board.

(c) A governing board may, at any time, increase the wages or salaries of classified employees if the board or, in a merit system district, the personnel commission approves a classification change in a position, a class of positions, or any or all of the positions or classes of positions a part of the classified service.

(d) The provisions of this section shall not be construed to permit a governing board to demote or dismiss an employee as a result of reclassification of a position or class of positions except as may otherwise be permitted by law.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

SEC. 197. Section 88163 of the Education Code is amended to read:

88163. If the governing board of a community college district cannot comply with the provisions of subdivision (a) of Section 88162 because it is engaged in a study, which was commenced prior to the commencement of the school year, to increase the salaries and wages of persons employed by the district in nonacademic positions, the board may, by appropriate action taken prior to the final adoption of its budget, do either of the following:

(a) Adopt an interim salary schedule which shall be the same schedule as for the preceding year, except that increases may be granted at that time based upon increased cost-of-living indexes, and provide that the salaries and wages fixed as a result of the study shall be payable for the entire school year to include the period thereof in which the study was conducted and final board action taken.

(b) Provide that the salaries and wages fixed as a result of the study shall be effective only for that portion of the school year, as determined by the board at the time it takes action after the study has been completed. "Portion of the school year," as used in this subdivision shall not be for any period of time less than the period of time remaining in the school year from the date the governing board adopts the salary schedule based on the study commenced

prior to that school year.

SEC. 198. Section 88199 of the Education Code is amended to read:

88199. Governing boards of community college districts may grant leaves of absence to persons employed in nonacademic positions, and at their discretion may pay compensation at the rate the board prescribes, during the absence, to any employee whose absence is caused by accident or illness, whether or not the absence arises out of or in the course of the employment of the employee, or because of quarantine which results from his or her contact with other persons having a contagious disease while performing his or her duties.

SEC. 199. Section 88202 of the Education Code is amended to read:

88202. Any classified employee of a community college district or county superintendent of schools who has been employed for a period of one calendar year or more whose employment is terminated for reasons other than action initiated by the employer for cause and who subsequently accepts employment with another district or county superintendent of schools within one year of the termination of his or her former employment, shall have transferred with him or her to the second district or county superintendent of schools the total amount of earned leave of absence for illness or injury to which he or she is entitled under Section 88191. This transfer shall be in the same manner as is provided for academic employees.

In any case where an employee was terminated as a result of action initiated by the employer for cause, such a transfer may be made if agreed to by the governing board of the district or the county superintendent of schools newly employing the employee.

All or any part of the previous service, not separated by a break in service greater than one year as of the last day of paid service, may, if agreed to by the employing entity, be construed to have been served in the new district or county superintendent of schools of employment for seniority purposes, except that the previous service may not be counted, for seniority purposes, when position or personnel reduction is ordered, for any reason, by the board.

No governing board shall adopt any policy or rule, written or unwritten, which requires all classified employees, or any individual classification, or group of classifications of employees transferring to its district to waive any part or all benefits which they may be entitled to have transferred in accordance with this section.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

SEC. 200. Section 88203 of the Education Code is amended to read:

88203. All probationary or permanent employees a part of the classified service shall be entitled to the following paid holidays

provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday: January 1, February 12 known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4, the first Monday in September known as "Labor Day," November 11 known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," December 25, every day appointed by the President, or the Governor of this state, as provided for in subdivisions (b) and (c) of Section 79020 for a public fast, thanksgiving or holiday, or any day declared a holiday under Section 1318 or 79022 for classified or academic employees. School recesses during the Christmas and Easter periods shall not be considered holidays for classified employees who are normally required to work during that period; provided, however, that this shall not be construed as affecting vacation rights specified in Section 88203.

Regular employees of the district who are not normally assigned to duty during the school holidays of December 25 and January 1 shall be paid for those two holidays provided that they were in a paid status during any portion of the working day of their normal assignment immediately preceding or succeeding the holiday period.

When a holiday herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday herein listed falls on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. When a classified employee is required to work on any of said holidays, he or she shall be paid compensation, or given compensating time off, for such work, in addition to the regular pay received for the holiday, at the rate of time and one-half his or her regular rate of pay.

The provisions of Article 3 (commencing with Section 79020) of Chapter 8 of Part 48 of this division shall not be construed to in any way limit the provisions of this section, nor shall anything in this section be construed to prohibit the governing board from adopting separate work schedules for the academic and the classified services, or from providing holiday pay for employees who have not been in paid status on the days specified herein. Notwithstanding the adoption of separate work schedules for the academic and the classified services, on any schoolday during which students would otherwise have been in attendance but are not and for which faculty receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

SEC. 201. Section 88241 of the Education Code is amended to read:

88241. The Legislature recognizes the need to provide classroom

instructors and other faculty with more time to instruct and to provide the means for them to utilize their professional knowledge and skills more effectively in the educational programs of the public schools. It is the intent of the Legislature to authorize the employment of instructional aides in order that classroom instructors and other faculty may draw upon the services of instructional aides to assist them in ways determined to be useful in improving the quality of educational opportunities for students.

SEC. 202. Section 88243 of the Education Code is amended to read:

88243. As used in this article, "instructional aide" means a person employed to assist classroom instructors and other faculty in the performance of their duties and in the supervision of students and in instructional tasks which, in the judgment of the faculty to whom the instructional aide is assigned, may be performed by a person not qualified as a classroom instructor.

SEC. 203. Section 88244 of the Education Code is amended to read:

88244. (a) Subject to the provisions of this article, any community college district may employ instructional aides to assist classroom instructors and other faculty in the performance of duties as defined in Section 88243. An instructional aide shall perform only such duties as, in the judgment of the faculty to whom the instructional aide is assigned, may be performed by a person not qualified as a classroom instructor. These duties shall not include assignment of grades to students. An instructional aide need not perform such duties in the physical presence of the instructor but the faculty member shall retain responsibility for the instruction and supervision of the students in his or her charge.

(b) Educational qualifications for instructional aides shall be prescribed by the community college district employer and shall be appropriate to the responsibilities to be assigned.

SEC. 204. Section 88245 of the Education Code is amended to read:

88245. Notwithstanding the provisions of Section 66015, no instructional aide shall give out any personal information concerning any student who is not his or her own child or ward, except under judicial process, to any person other than a faculty member or administrator in the school which the student attends. A violation of this section may be a cause for disciplinary action, including dismissal.

SEC. 205. Section 88246 of the Education Code is repealed.

SEC. 206. Section 88247 of the Education Code is amended to read:

88247. (a) An instructional aide shall not be deemed an academic employee for the purposes of apportioning state aid and no regrouping of students with instructional aides shall be construed as a class for apportionment purposes.

(b) Instructional aides shall be classified employees of the district,

and shall be subject to all of the rights, benefits, and burdens of the classified service, except as specified in Section 88005 for "restricted" positions.

SEC. 207. Section 88261 of the Education Code is amended to read:

88261. A community college district classified employee assigned to a data processing center which is transferred to a county superintendent of schools shall, upon the election of the employee to do so, cease to be an employee of the community college district upon the effective date of the agreement transferring the data processing center to the county superintendent of schools and shall thereafter be an employee of the county superintendent of schools and be paid from the county school service fund.

SEC. 207.5. Section 88.5 of this bill incorporates amendments to Section 87488 of the Education Code proposed by this bill and AB 2609. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 87488 of the Education Code, and (3) this bill is enacted after AB 2609, in which case Section 87488 of the Education Code, as amended by AB 2609, shall remain operative only until the operative date of this bill, at which time Section 88.5 of this bill shall become operative, and Section 88 of this bill shall not become operative.

SEC. 208. Sections 95, 98, 99, 100, and 101 of this act shall become operative only if the conditions specified in subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988 have been fulfilled.

SEC. 209. 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. 210. 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 affects the fundamental rights of community college employees. In order for this act to become operative in 1990 with respect to these rights, it is necessary that this act take immediate effect.

CHAPTER 1303

An act to amend Section 1463.14 of, and to add Section 1463.01 to, and to add Chapter 2.81 (commencing with Section 1001.40) to Title 6 of Part 2 of, the Penal Code, relating to crimes.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Chapter 2.81 (commencing with Section 1001.40) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.81. PRETRIAL DIVERSION OF TRAFFIC VIOLATORS

1001.40. Notwithstanding any other provision of law, a county acting on behalf of one or more individual courts may by ordinance establish a program that provides for pretrial diversion by the court of any person issued a notice to appear for a traffic violation to attend any traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5 of the Vehicle Code.

SEC. 1.5. Section 1463.01 is added to the Penal Code, to read:

1463.01. In any case in which a person is convicted of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code, the distribution of funds required pursuant to Section 1463, and the distribution of penalties and assessments, including, but not limited to, those imposed and collected under Sections 1463.14, 1463.16, 1463.18, and 1464, Section 11372.5 of the Health and Safety Code, Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, and Sections 23199, 23249.55, and 42006 of the Vehicle Code, may, upon approval of the Controller, be determined and made monthly upon the basis of probability sampling.

The sampling shall be procedural in nature and shall not substantively modify the distributions otherwise required by law. The procedure for the sampling shall be prescribed by the county auditor.

The accuracy of the distribution shall be verified during an annual audit to be performed consistent with Section 71383 of the Government Code and the distribution shall be adjusted in the subsequent fiscal year as may be necessary to compensate for any departure from the distributions otherwise required by law.

SEC. 2. Section 1463.14 of the Penal Code is amended to read:

1463.14. (a) Notwithstanding the provisions of Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code shall be deposited in a special account which shall be used exclusively to pay for the cost

of performing for the county, or a city or special district within the county, analysis of blood, breath or urine for alcohol content or for the presence of drugs, or for services related to that testing. The sum shall not exceed the reasonable cost of providing the services for which the sum is intended.

On November 1 of each year, the treasurer of each county shall determine those moneys in the special account which were not expended during the preceding fiscal year, and shall transfer those moneys into the general fund of the county. The county may retain an amount of that money equal to its administrative cost incurred pursuant to this section, and shall distribute the remainder pursuant to Section 1463.

(b) The Board of Supervisors of Contra Costa County may, by resolution, authorize the imposition of a fifty dollar ($50) assessment by the court upon each defendant convicted of a violation of Section 23152 or 23153 of the Vehicle Code for deposit in the account from which the fifty dollar ($50) distribution specified in subdivision (a) is deducted.

(c) The board of supervisors of a county other than Contra Costa County may, by resolution, authorize an additional penalty upon each defendant convicted of a violation of Section 23152 or 23153 of the Vehicle Code, of an amount equal to the cost of testing for alcohol content, less the fifty dollars ($50) deposited as provided in subdivision (a). The additional penalty authorized by this subdivision shall be imposed only in those instances where the defendant has the ability to pay, but in no case shall the defendant be ordered to pay a penalty in excess of fifty dollars ($50). The penalty authorized shall be deposited directly with the county, or city or special district within the county, which performed the test, in the special account described in subdivision (a), and shall not be the basis for any additional assessment pursuant to Section 1464 or 1465, or Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code.

For purposes of this subdivision, "ability to pay" means the overall capability of the defendant to pay the additional penalty authorized by this subdivision, taking into consideration all of the following:

(A) Present financial obligations, including family support obligations, and fines, penalties, and other obligations to the court.

(B) Reasonably discernible future financial position over the next 12 months.

(C) Any other factor or factors which may bear upon the defendant's financial ability to pay the additional penalty.

(d) The Department of Justice shall promulgate rules and regulations to implement the provisions of this section.

CHAPTER 1304

An act to add Sections 14035.1, 14045, 65083, and 65913.5 to the Government Code, and to add Section 50502.5 to the Health and Safety Code, relating to housing.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

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

(a) The availability of housing is of vital statewide importance and the early attainment of decent housing and a suitable living environment for every Californian is a priority of the highest order.

(b) High housing costs in urban centers are causing workers to reside long distances from their places of employment in an effort to obtain housing. Young families, newcomers, and new firms are discouraged from locating in these metropolitan centers.

(c) The underuse of mass transit and increase in the number of vehicles are causing traffic congestion that each day results in 400,000 hours lost in traffic, 200 tons of pollutants released into the air we breathe, and three million two hundred thousand dollars ($3,200,000) added costs to the motoring public.

(d) To adequately address our housing and transportation problems will require cooperative participation of government and the private sector. Local and state governments have a responsibility to use the powers vested in them to facilitate the development of housing at adequate densities in close proximity to mass transit stations. The construction of relatively dense housing near mass transit stations is one way to increase public transit usage and decrease traffic on the highways.

SEC. 2. Section 14035.1 is added to the Government Code, to read:

14035.1. As part of implementation of the demonstration program established pursuant to Section 14045 of the Government Code, the commission, in the allocation of funds made available pursuant to Section 99317 of the Public Utilities Code or pursuant to a voter-approved rail bond for an exclusive mass transit guideways project, shall consider those projects proposed to be located on a demonstration site where the applicant and the local entity responsible for land use decisions have entered into a binding agreement to promote high density residential development within one-half mile of a mass transit guideway station. The commission shall consider all projects within a selected demonstration site submitted to it as a part of a regional transportation program by December 1, 1991, or as an applicant for inclusion in the 1991 or 1992 Transit Capital Improvement Program. Any project selected by the

commission which is located in a demonstration site shall be considered for inclusion in the 1991 or 1992 annual Transit Capital Improvement Program or in the 1992 State Transportation Improvement Program. This section does not authorize the granting of any priority that conflicts with any bond law governed by this section, or which impairs the rights of bondholders under any of these bond laws. Nor does this section preclude the commission from applying the criteria for making awards which may be required or permitted pursuant to other provisions of law.

SEC. 3. Section 14045 is added to the Government Code, to read:

14045. (a) The department, in cooperation with the California Transportation Commission, shall develop and implement a demonstration program to test the effectiveness of increasing densities of residential development in close proximity to mass transit guideway stations to increase the benefit from public investment in mass transit. The department and commission shall jointly select three or more demonstration sites, at least one of which includes an existing transit station and at least two which include proposed transit stations. Each demonstration site shall be located in a city or county that has adopted land use policies and programs encouraging the development of high-density residential development near mass transit guideway stations. These policies and programs may be included in the locality's general plan, zoning ordinance, including a density bonus ordinance adopted pursuant to Section 65915, development agreement adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 3 of Division 1 of Title 7, redevelopment plan or amendment to the plan adopted pursuant to Article 4 (commencing with Section 33330) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code, and congestion management plan adopted pursuant to Chapter 2.6 (commencing with Section 65099) of Division 1 of Title 7.

(b) The department shall prepare a preliminary report regarding the disposition of projects proposed for inclusion in either the 1991 and 1992 annual Transit Capital Improvement Program or the 1992 State Transportation Improvement Program and a final report regarding the impact of the demonstration on the level of use of mass transit by residents living within one-half mile of the mass transit guideway station. The department shall submit each report to the commission for review and comment. The commission shall submit the preliminary report, with its comments, to the Legislature no later than January 1, 1994, and the final report, with its comments, to the Legislature no later than January 1, 1996.

SEC. 4. Section 65083 is added to the Government Code, to read:

65083. As part of implementation of the demonstration program established pursuant to Section 14045 of the Government Code, the regional transportation planning agency preparing the seven-year regional transportation improvement program pursuant to Section 65082 shall consider those exclusive mass transit guideway projects where the applicant and the local entity responsible for land use

decisions have entered into a binding agreement to promote high density residential development within one-half mile of a mass transit guideway station. Any project selected by the agency which is located in a demonstration site shall be considered for inclusion in the regional transportation improvement program. This section shall not preclude the agency from applying the criteria for making awards which may be required or permitted pursuant to other provisions of law.

SEC. 5. Section 65913.5 is added to the Government Code, to read:

65913.5. (a) As part of implementation of the demonstration program established pursuant to Section 14045 of the Government Code, a city, county, or city and county participating in the demonstration program shall grant a density bonus to a developer of housing within one-half mile of a mass transit guideway station unless the locality finds that granting of the density bonus would result in a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(b) Notwithstanding subdivision (f) of Section 65915, as used in this section, "density bonus" means a density increase of at least 25 percent over the otherwise maximum residential density allowed under the general plan and any applicable zoning and development ordinances.

(c) A city, county, or city and county may require a developer to enter into a development agreement pursuant to Article 2.5 (commencing with Section 65864) of Chapter 3 of Division 1 of Title 7 to implement a density bonus granted pursuant to this section.

(d) In an action or proceeding to attack, set aside, void, or annul a density bonus granted pursuant to this section, a court shall uphold the decision of a city, county, or city and county to grant the density bonus if the court finds that there is substantial evidence in the record that the housing development will assist the city, county, or city and county to do all of the following:

(1) Meet its share of the regional housing needs determined pursuant to Article 10.6 (commencing with Section 65580) of Chapter 4 of Division 1 of Title 7.

(2) Implement its congestion management plan adopted pursuant to Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7.

(e) Nothing in this section shall be construed to relieve any local agency from complying with the provisions of the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7.

SEC. 6. Section 50502.5 is added to the Health and Safety Code, to read:

50502.5. (a) In conjunction with the implementation of the demonstration program established pursuant to Section 14045 of the Government Code, and subject to the availability of funds authorized

pursuant to Chapter 3.5 (commencing with Section 50531) and Section 50771.1, the department shall consider applications for funding of high density residential development located at demonstration sites within one-half mile of an existing or proposed mass transit guideway station. If the mass transit guideway station is proposed, the application shall include a binding agreement between the local legislative body and the transit operator regarding its timely development, including the source of committed funds.

(b) This section does not authorize the granting of any priority that conflicts with any bond law governed by this section, or which impairs the rights of bondholders under any of those bond laws. Nor does this section preclude the department from applying the criteria for making awards which may be required or permitted pursuant to other provisions of law.

SEC. 7. In enacting this act, the Legislature finds and declares that the construction of housing developments at higher densities is an issue of statewide importance because it increases the supply of housing which benefits from public investment in rail passenger transportation. Accordingly, the Legislature finds and declares its intent that this section shall apply to all cities, counties, and cities and counties, including charter cities.

CHAPTER 1305

An act to amend Section 1942.4 of the Civil Code, to amend Sections 134, 904.2, 904.5, 916, and 1141.11 of, to repeal Section 904.3 of, and to repeal Chapter 5A (commencing with Section 116) of, and to add Chapter 5.5 (commencing with Section 116.110) to, Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 818.9 and 73112 of the Government Code, and to amend Section 16370.5 of the Vehicle Code, relating to small claims court.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 1942.4 of the Civil Code is amended to read:

1942.4. (a) Any landlord who demands or collects rent when all of the following conditions exist is liable to the tenant or lessee for the actual damages sustained by the tenant or lessee and special damages in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000):

(1) The rental dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1.

(2) A public officer or employee who is responsible for the enforcement of any housing law has notified the landlord, or an agent of the landlord, in a written notice issued after inspection of the

premises which informs the landlord of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 60 days beyond the date of issuance of the notice specified in paragraph (2) and the delay is without good cause.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) In addition to recovery of allowable costs of suit, the prevailing party shall be entitled to recovery of reasonable attorney's fees in an amount fixed by the court.

(c) The tenant or lessee shall be under no obligation to undertake any other remedy prior to exercising his or her rights under this section.

(d) Any action under this section may be maintained in small claims court if the claim does not exceed the jurisdictional limit of that court.

(e) The remedy provided by this section applies only to rental agreements or leases entered into or renewed on or after January 1, 1986, and may be utilized in addition to any other remedy provided by this chapter, the rental agreement, lease, or other applicable statutory or common law.

SEC. 2. Chapter 5A (commencing with Section 116) of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 3. Chapter 5.5 (commencing with Section 116.110) is added to Title 1 of Part 1 of the Code of Civil Procedure, to read:

CHAPTER 5.5. SMALL CLAIMS COURT

Article 1. General Provisions

116.110. This chapter shall be known and may be cited as "The Small Claims Act."

116.120. The Legislature hereby finds and declares as follows:

(a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions of municipal and justice courts have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions of justice and municipal courts, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other

parties or witnesses.

116.130. In this chapter, unless the context indicates otherwise:

(a) "Plaintiff" means the party who has filed a small claims action; the term includes a defendant who has filed a small claims action against a plaintiff.

(b) "Defendant" means the party against whom the plaintiff has filed a small claims action; the term includes a plaintiff against whom a defendant has filed a small claims action.

(c) "Judgment creditor" means the party, whether plaintiff or defendant, in whose favor a money judgment has been rendered.

(d) "Judgment debtor" means the party, whether plaintiff or defendant, against whom a money judgment has been rendered.

(e) "Person" means an individual, corporation, partnership, firm, association, or other entity.

(f) "Individual" means a natural person.

(g) "Party" means a plaintiff or defendant.

(h) "Motion" means a party's written request to the court for an order or other action; the term includes an informal written request to the court, such as a letter.

(i) "Declaration" means a written statement signed by an individual which includes the date and place of signing, and a statement under penalty of perjury that its contents are true and correct.

(j) "Good cause" means circumstances sufficient to justify the requested order or other action, as determined by the judge.

(k) "Mail" means first-class mail with postage fully prepaid, unless stated otherwise.

Article 2. Small Claims Court

116.210. In each justice court and each municipal court there shall be a small claims division.

116.220. (a) The small claims court has jurisdiction in the following actions:

(1) For the recovery of money, if the amount of the demand does not exceed two thousand five hundred dollars ($2,500).

(2) To enforce payment of delinquent unsecured personal property taxes in an amount not to exceed two thousand five hundred dollars ($2,500), if the legality of the tax is not contested by the defendant.

(3) In unlawful detainer, after default in the rent for residential property, if the term of the tenancy is not longer than month to month and the amount of the demand does not exceed two thousand five hundred dollars ($2,500).

(4) To issue the writ of possession authorized by Section 1861.5 of the Civil Code if the amount of the demand does not exceed two thousand five hundred dollars ($2,500).

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution,

reformation, and specific performance, in lieu of, or in addition to, money damages.

(c) Notwithstanding subdivision (a), the small claims court has jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed one thousand five hundred dollars ($1,500).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

(e) No prejudgment attachments shall issue in an action subject to this chapter.

116.230. (a) A fee of eight dollars ($8) shall be charged and collected for the filing of a claim if the number of claims filed by the party in each court in the preceding 12 calendar months is 12 or less; and a fee of sixteen dollars ($16) shall be collected for the filing of any additional claims.

(b) With respect to each party to whom a copy of the claim is mailed by the clerk, a fee to cover the actual cost of mail service adjusted upward to the nearest dollar shall be charged and collected.

(c) The number of claims filed by a party during the preceding 12 calendar months shall be determined by a declaration by the party stating the number of claims so filed and submitted to the clerk with the current claim.

116.240. With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. They may also be scheduled at any public building within the judicial district, including places outside the courthouse.

(b) Each small claims division of a municipal court with four or more judicial officers shall conduct at least one night session or Saturday session each month. The term "session" includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

116.260. In each county, individual assistance shall be made available to advise small claims litigants and potential litigants without charge as provided in Section 116.940 and by rules adopted by the Judicial Council.

116.270. Any small claims division may use law clerks to assist the judge with legal research of small claims cases.

Article 3. Actions

116.310. No formal pleading other than the claim of the plaintiff and order to the defendant, as described in Sections 116.320 and 116.330, are necessary to initiate a small claims action.

116.320. (a) A plaintiff may commence an action in the small

claims court by filing a claim under oath with the clerk of the small claims court in person or by mail.

(b) The claim form shall be a simple nontechnical form approved or adopted by the Judicial Council. It shall set forth (1) the name and address of the defendant; (2) the amount and the basis of the claim; (3) that the plaintiff has demanded payment and, in applicable cases, possession of the property; (4) that the defendant has failed or refused to pay, and, where applicable, has refused to surrender the property; and (5) that the plaintiff understands that the judgment on his or her claim will be conclusive and without a right of appeal.

(c) The form or accompanying instructions shall include information that the plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and (3) may ask the court to waive fees for filing and serving the claim on the ground that the plaintiff is unable to pay then, using the forms approved by the Judicial Council for that purpose.

116.330. (a) When a claim is filed, the clerk shall schedule the case for hearing in accordance with subdivision (c) and shall issue an order directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense.

(b) In lieu of the method of setting the case for hearing described in subdivision (a), at the time a claim is filed the clerk may do all of the following:

(1) Cause a copy of the claim to be mailed to the defendant by any form of mail providing for a return receipt.

(2) On receipt of proof that the claim was served as provided in paragraph (1), issue an order scheduling the case for hearing in accordance with subdivision (c) and directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense.

(3) Cause a copy of the order setting the case for hearing and directing the parties to appear, to be served upon the parties by any form of mail providing for a return receipt.

(c) If the defendant resides in the county in which the action is filed, the case shall be scheduled for hearing at least 15 days but not more than 40 days from the date of the order. If the defendant resides outside the county in which the action is filed, the case shall be scheduled for hearing at least 30 days but not more than 70 days from the date of the order.

(d) If there are two or more defendants and one or more of them resides outside the county in which the action is filed, the date for the appearance of all the defendants shall be at least 30 days but not more than 70 days from the date of the order.

(e) A public entity, as defined in Section 811.2 of the Government Code, which files more than 10 claims at one time may request a date for the appearance of the defendant later than that otherwise specified in this section, and the clerk may set the case for hearing at that later date subject to the following limits:

(1) If all defendants reside in the county in which the action is

filed, the date for appearance shall not be more than 70 days from the date of the order.

(2) In other cases, the date for appearance shall not be more than 90 days from the date of the order.

116.340. (a) Service of the claim and order on the defendant may be made by any one of the following methods:

(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt service by any other method.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 10 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 15 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(d) Service shall be made within this state, except as provided in subdivision (e).

(e) The owner of record of real property in California who resides in another state and has no lawfully designated agent in California for service of process may be served by any of the methods described in this section.

(f) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.

116.350. (a) Any party may submit a written request for postponement of a hearing date.

(b) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing for at least 15 days, and shall notify the parties of the new hearing date by mail.

116.360. If service of the claim and order upon the defendant is not completed sufficiently in advance of the scheduled hearing, as required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the

court shall postpone the hearing for at least 15 days, and shall notify by mail any defendant who has been served but who did not personally appear.

116.370. (a) Venue in small claims actions shall be the same as in other civil actions.

(b) A defendant may challenge venue by writing to the court, without personally appearing at the hearing.

(c) In all cases, including those in which the defendant does not either challenge venue or appear at the hearing, the court shall inquire into the facts sufficiently to determine whether venue is proper, and shall make its determination accordingly.

(d) If the court determines that the action was not commenced in the proper venue, the court, on its own motion, shall dismiss the action without prejudice unless all defendants are present and agree that the action may be heard.

116.380. (a) The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limit stated in Section 116.220.

(b) The defendant's claim shall be filed and served in the manner provided for filing and serving a claim of the plaintiff under Sections 116.330 and 116.340.

(c) The defendant shall cause a copy of the claim and order to be served on the plaintiff at least five days before the hearing date, unless the defendant was served 10 days or less before the hearing date, in which event the defendant shall cause a copy of the defendant's claim and order to be served on the plaintiff at least one day before the hearing date.

(d) If the amount of the defendant's claim exceeds the jurisdictional limit stated in Section 116.220, then the provisions on transfer in Section 116.390 apply.

116.390. (a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limit stated in Section 116.220, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff's claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.

(b) The defendant may make the request by filing with the small claims court in which the plaintiff commenced the action, at or before the time set for the hearing of that action, a declaration stating the facts concerning the defendant's action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff and the sum of one dollar ($1) for a transmittal fee. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.

(c) The small claims court shall not transfer the action until after a judgment is rendered unless the ends of justice would be served. If the small claims action is transferred prior to judgment, both

actions shall be tried together in the transferee court.

(d) When the small claims court orders the action transferred, it shall transmit all files and papers to the transferee court.

(e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney's fees and filing fees.

Article 4. Parties

116.410. (a) Any person who is at least 18 years of age and mentally competent may be a party to a small claims action.

(b) A minor or incompetent person may appear by a guardian ad litem appointed by a judge of the court in which the action is filed.

116.420. (a) No claim shall be filed or maintained in small claims court by the assignee of the claim.

(b) This section does not prevent the filing or defense of an action in the small claims court by (1) a trustee in bankruptcy in the exercise of the trustee's duties as trustee, or (2) by the holder of a security agreement, retail installment contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the holder's portfolio of investments, provided that the holder is not an assignee for the purpose of collection.

116.430. (a) If the plaintiff operates or does business under a fictitious business name and the claim relates to that business, the claim shall be accompanied by the filing of a declaration stating that the plaintiff has complied with the fictitious business name laws by executing, filing, and publishing a fictitious business name statement as required.

(b) A small claims action filed by a person who has not complied with the applicable fictitious business name laws by executing, filing, and publishing a fictitious business name statement as required shall be dismissed without prejudice.

(c) Whenever a claim that is filed against a person operating or doing business under a fictitious business name relates to the defendant's business, the court shall inquire at the time of the hearing into the defendant's correct legal name and the name or names under which the defendant does business. If the correct legal name of the defendant, or the name actually used by the defendant, is other than the name stated on the claim, the court shall amend the

claim to state the correct legal name of the defendant, and the name or names actually used by the defendant.

(d) The plaintiff may request the court at any time, whether before or after judgment, to amend the claim of the plaintiff or the judgment to include both the correct legal name and the actually used name or names of the defendant.

(e) For purposes of this section, "fictitious business name" means the term as defined in Section 17900 of the Business and Professions Code, and "fictitious business name statement" means the statement described in Section 17913 of the Business and Professions Code.

Article 5. Hearing

116.510. The hearing and disposition of the small claims action shall be informal, the object being to dispense justice promptly between the parties.

116.520. (a) The parties have the right to offer evidence by witnesses at the hearing or, with the permission of the court, at another time.

(b) If the defendant fails to appear, the court shall still require the plaintiff to present evidence to prove his or her claim.

(c) The court may consult witnesses informally and otherwise investigate the controversy with or without notice to the parties.

116.530. (a) Except as permitted by this section, no attorney may take part in the filing, conduct, or defense of a small claims action.

(b) Subdivision (a) does not apply if the attorney is appearing to maintain or defend an action (1) by or against himself or herself, (2) by or against a partnership in which he or she is a general partner and in which all the partners are attorneys, or (3) by or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys.

(c) Nothing in this section shall prevent an attorney from (1) providing advice to a party to a small claims action, either before or after the commencement of the action; (2) testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify; (3) representing a party in an appeal to the superior court; and (4) representing a party in connection with the enforcement of a judgment.

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the filing, conduct, or defense of a small claims action.

(b) A corporation may appear in small claims court only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party other than a corporation or a natural person may appear in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely

representing the party in small claims court.

(d) The personal presence of the plaintiff or defendant at the hearing is not required if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The individual appearing for the plaintiff is a regular employee, or a duly appointed or elected officer or director of the party, who is employed, appointed, or elected for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) At the hearing of a small claims action, the court shall require any individual who is appearing on behalf of a corporation or other entity which is not a natural person or who is appearing under subdivision (d) to submit a declaration stating (1) that the individual is authorized to appear for the party, (2) the basis for that authorization, and (3) that the individual is not employed solely to represent the party in small claims court.

(f) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear on his or her behalf, if (1) the plaintiff is serving on active duty in the United States armed forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, and (3) the assignment is for more than six months. An individual presenting a claim for a plaintiff under this subdivision shall file with the court, at the time of the hearing, a declaration stating that the individual is serving without compensation, and that the individual has presented no more than four claims in small claims courts on behalf of others during the preceding 12 months. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limit stated in Section 116.380.

(g) A plaintiff incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another person to appear on his or her behalf.

(h) A defendant who is a nonresident owner of real property is not required to personally appear, and may submit written declarations to serve as evidence supporting his or her defense, or may allow another person to appear on his or her behalf. An individual appearing for a defendant under this subdivision shall file a declaration stating that the individual is serving without compensation.

(i) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

116.550. (a) If the court determines that a party does not speak

or understand English sufficiently to comprehend the proceedings or give testimony, or cannot properly present his or her own claim or defense and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.

(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.

(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.

Article 6. Judgment

116.610. (a) The court shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limit stated in Section 116.220, and may make such orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle.

(c) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(d) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(e) When the court renders judgment, the clerk shall promptly mail notice of entry of the judgment to the parties.

(f) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council.

116.620. (a) The judgment debtor shall pay the amount of the judgment either immediately or at the time and upon the terms and conditions, including payment by installments, which the court may order.

(b) The court may at any time, for good cause, upon motion by a party and notice by the clerk to all affected parties at their last known address, amend the terms and conditions for payment of the judgment to provide for payment by installment. The determination shall be made without regard to the nature of the underlying debt and without regard to whether the moving party appeared before entry of the judgment.

(c) In determining the terms and conditions of payment, the

court may consider any factors which would be relevant to a claim of exemption under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2.

116.630. The court may, at any time after judgment, for good cause, upon motion by a party and notice by the clerk to all affected parties at their last known address, amend the name of any party to include both the correct legal name and the actually used name or names of that party.

Article 7. Motion to Vacate and Appeal

116.710. (a) The plaintiff in a small claims action shall have no right to appeal the judgment on the plaintiff's claim, but a plaintiff who did not appear at the hearing may file a motion to vacate the judgment in accordance with Section 116.720.

(b) The defendant with respect to the plaintiff's claim, and a plaintiff with respect to a claim of the defendant, may appeal the judgment to the superior court in the county in which the action was heard.

(c) A defendant who did not appear at the hearing has no right to appeal the judgment, but may file a motion to vacate the judgment in accordance with Section 116.730 or 116.740 and also may appeal the denial of that motion.

116.720. (a) A plaintiff who did not appear at the hearing in the small claims court may file a motion to vacate the judgment with the clerk of the small claims court. The motion must be filed within 20 days after the clerk has mailed notice of entry of the judgment to the parties. The mailing of the notice of entry of the judgment extends the time for filing the motion to vacate by the applicable period stated in Section 1013a.

(b) Upon a showing of good cause, the small claims court may grant the motion. If the defendant is not present, the court shall hear the motion in the defendant's absence.

(c) If the motion is granted, and if all parties are present and agree, the court may hear the case without rescheduling it. If the defendant is not present, the judge or clerk shall reschedule the case and give notice in accordance with Section 116.330.

116.730. (a) A defendant who did not appear at the hearing in the small claims court may file a motion to vacate the judgment with the clerk of the small claims court. The motion must be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties. The mailing of the notice of entry of the judgment extends the time for filing the motion to vacate by the applicable period stated in Section 1013a.

(b) The defendant shall appear at any hearing on the motion, or submit written justification for not appearing together with a declaration in support of the motion.

(c) Upon a showing of good cause, the court may grant the motion to vacate the judgment.

(d) If the motion is denied, the defendant may appeal to the superior court only on the denial of the motion to vacate the judgment. The notice of appeal shall be filed with the clerk of the small claims court within 10 days after the small claims court has denied the motion to vacate the judgment.

(e) If the court does not decide the motion within 60 days after it was filed, the motion shall be deemed denied and the defendant may appeal to the superior court only on the denial of the motion. The notice of appeal shall be filed within 10 days after the expiration of the 60-day period.

(f) If the superior court determines that the defendant's motion to vacate the judgment should have been granted, the superior court may hear the defendant's appeal without rescheduling the matter, provided the defendant has previously complied with this article.

116.740. (a) If the defendant was not properly served as required by Section 116.330 or 116.340 and did not appear at the hearing in the small claims court, the defendant may file a motion to vacate the judgment with the clerk of the small claims court. The motion shall be accompanied by a supporting declaration, and shall be filed within 180 days after the defendant discovers or should have discovered that judgment was entered against the defendant.

(b) The motion and supporting declaration shall be on a simple nontechnical form approved or adopted by the Judicial Council.

(c) The court may order that the enforcement of the judgment shall be suspended pending a hearing and determination of the motion to vacate the judgment.

(d) Upon a showing of good cause, the court may grant the motion to vacate the judgment.

116.750. (a) An appeal from a judgment in a small claims action is taken by filing a notice of appeal with the clerk of the small claims court.

(b) A notice of appeal shall be filed not later than 20 days after the clerk has mailed notice of entry of the judgment to the parties. The time for filing the notice of appeal is not extended by virtue of the mailing of the notice of entry of the judgment. A notice of appeal filed after the 20-day period is ineffective for any purpose.

116.760. The appealing party shall pay the same filing fee that is required for an appeal of a civil action from a justice or municipal court.

(b) No fee shall be charged to the plaintiff in the small claims action for the filing of any documents in the superior court.

116.770. (a) On appeal to the superior court, the claims of all parties shall be heard anew.

(b) The hearing on an appeal to the superior court shall be conducted informally, and no tentative decision or statement of decision is required.

(c) Article 5 (commencing with Section 116.510) on hearings in the small claims court applies in hearings on appeal in the superior court, except that attorneys may participate.

(d) The superior court shall hear anew the claims against all defendants who are parties to the small claims action at the time any one of them files a notice of appeal. The superior court shall also rehear the claim of a defendant which was heard in the small claims court.

(e) The clerk of the superior court shall schedule the hearing for the earliest available time and shall mail written notice of the hearing to the parties at least 14 days prior to the time set for the hearing.

(f) The Judicial Council may 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.

116.780. (a) The judgment of the superior court after a hearing on appeal is final and not appealable.

(b) Article 6 (commencing with Section 116.610) on judgments of the small claims court applies to judgments of the superior court after a hearing on appeal, except that if the judgment is affirmed in whole or in part or the appeal is dismissed, the superior court also may allow plaintiff the sum of fifteen dollars ($15) as an attorney's fee.

(c) The judgment shall have the same force and effect as a judgment in an action commenced in the superior court.

116.790. If the superior court finds that the appeal was without substantial merit and not based on good faith, but was intended to harass or delay the plaintiff, or to encourage the plaintiff to abandon his or her claim, the court may award the plaintiff attorney's fees of up to, but not exceeding, two hundred fifty dollars ($250), following a hearing on the matter.

116.795. (a) The superior court may dismiss the appeal if the appealing party does not appear at the hearing or if the appeal is not heard within one year from the date of filing the notice of appeal with the clerk of the small claims court.

(b) Upon dismissal of an appeal by the superior court, the small claims court shall thereafter have the same jurisdiction as if no appeal had been filed.

Article 8. Satisfaction and Enforcement of Judgment

116.810. (a) Enforcement of the judgment of a small claims court is automatically suspended, without the filing of a bond by the defendant, until the expiration of the time for appeal.

(b) If an appeal is filed as provided in Article 7 (commencing with Section 116.710), enforcement of the judgment of the small claims court is suspended unless the appeal is dismissed by the superior court pursuant to Section 116.795. If the appeal is dismissed, the judgment may be enforced.

116.820. (a) The judgment of a small claims court may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Section 1174 on the enforcement of judgments of other courts. A judgment of the superior court after a hearing on appeal may be enforced like other judgments of the superior court,

as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Section 1174 on the enforcement of judgment of other courts.

(b) Fees as provided in Sections 26828 and 26834 of the Government Code shall be charged and collected by the clerk for the issuance of a writ of execution or an abstract of judgment.

(c) The prevailing party in any action subject to this chapter is entitled to the costs of enforcing the judgment and accrued interest.

116.830. (a) At the time judgment is rendered, or notice of entry of the judgment is mailed to the parties, the clerk shall deliver or mail to the judgment debtor a form containing questions regarding the nature and location of any assets of the judgment debtor.

(b) Within 35 days after the clerk has mailed notice of entry of the judgment, unless the judgment has been satisfied, the judgment debtor shall complete the form and cause it to be delivered to the judgment creditor. The mailing of the notice of entry of the judgment extends the time for completing and delivering the form by the applicable period stated in Section 1013a.

(c) In the event a motion is made to vacate the judgment or an appeal is filed, a judgment debtor shall complete and deliver the form within 30 days after the clerk has mailed notice of denial of the motion to vacate, or notice of entry of judgment on the appeal, whichever is applicable. The mailing of the notice of denial of the motion or entry of the judgment extends the time for completing and delivering the form by the applicable period stated in Section 1013a.

(d) In case of the judgment debtor's willful failure to comply with subdivision (b) or (c), the judgment creditor may request the court to apply the sanctions, including arrest and attorney's fees, as provided in Section 708.170, on contempt of court.

(e) The Judicial Council shall approve or adopt the form to be used for the purpose of this section.

116.840. (a) At the option of the judgment debtor, payment of the judgment may be made either (1) to the judgment creditor in accordance with Section 116.850, or (2) to the court in which the judgment was entered in accordance with Section 116.860.

(b) The small claims court may order entry of satisfaction of judgment in accordance with subdivisions (c) and (d) of Section 116.850, or subdivision (b) of Section 116.860.

116.850. (a) If full payment of the judgment is made to the judgment creditor or to the judgment creditor's assignee of record, then immediately upon receipt of payment, the judgment creditor or assignee shall file with the clerk of the court an acknowledgment of satisfaction of the judgment.

(b) Any judgment creditor or assignee of record who, after receiving full payment of the judgment and written demand by the judgment debtor, fails without good cause to execute and file an acknowledgment of satisfaction of the judgment with the clerk of the court in which the judgment is entered within 14 days after receiving the request, is liable to the judgment debtor or the judgment debtor's grantees or heirs for all damages sustained by reason of the failure

and, in addition, the sum of fifty dollars ($50).

(c) A rebuttable presumption of full or partial payment of the judgment, whichever is applicable, is created if the judgment debtor files both of the following with the clerk of the court in which the judgment was entered:

(1) Either a canceled check or money order for the full or partial amount of the judgment written by the judgment debtor after judgment and made payable to and endorsed by the judgment creditor, or a cash receipt for the full or partial amount of the judgment written by the judgment debtor after judgment and signed by the judgment creditor.

(2) A declaration stating that (A) the judgment debtor has made full or partial payment of the judgment including accrued interest and costs; (B) the judgment creditor has been requested to file an acknowledgment of satisfaction of the judgment and refuses to do so, or refuses to accept subsequent payments, or the present address of the judgment creditor is unknown; and (C) the documents identified in and accompanying the declaration constitute evidence of the judgment creditor's receipt of full or partial payment.

(d) In the event that a rebuttable presumption of full payment of the judgment is created by subdivision (c), a satisfaction of the judgment shall be entered by the clerk of the court.

(e) In the event that a rebuttable presumption of partial payment of the judgment is created by subdivision (c), a satisfaction of the judgment shall be entered by the clerk of the court upon the judgment debtor's compliance with subdivision (c) of Section 116.860.

116.860. (a) A judgment debtor who desires to make payment to the court in which the judgment was entered may file a request to make payment, which shall be made on a form approved or adopted by the Judicial Council.

(b) Upon the filing of the request to make payment and the payment to the clerk of the amount of the judgment and any accrued interest and costs after judgment, plus any required fee authorized by this section, the clerk shall enter satisfaction of the judgment and shall remit payment to the judgment creditor as provided in this section.

(c) If partial payment of the judgment has been made to the judgment creditor, and the judgment debtor files the declaration and evidence of partial payment described in subdivision (c) of Section 116.850, the clerk shall enter satisfaction of the judgment upon receipt by the clerk of the balance owing on the judgment, including any accrued interest and costs after judgment, and the fee required by this section.

(d) If payment is made by means other than money order, certified or cashier's check, or cash, entry of satisfaction of the judgment shall be delayed for 30 days.

(e) The clerk shall notify the judgment creditor, at his or her last known address, that the judgment debtor has satisfied the judgment

by making payment to the court. The notification shall explain the procedures which the judgment creditor has to follow to receive payment.

(f) For purposes of this section, "costs after judgment" consist of only those costs itemized in a memorandum of costs filed by the judgment creditor or otherwise authorized by the court.

(g) Payments that remain unclaimed shall go to the local agency pursuant to Sections 50050 to 50056, inclusive, of the Government Code.

(h) The board of supervisors shall set a fee, not to exceed the actual costs of administering this section, up to a maximum of twenty-five dollars ($25), which shall be paid by the judgment debtor.

116.870. Sections 16250 to 16381, inclusive, of the Vehicle Code, regarding the suspension of the judgment debtor's privilege to operate a motor vehicle for failing to satisfy a judgment, apply if the judgment (1) was for damage to property in excess of five hundred dollars ($500) or for bodily injury to, or death of, any person in any amount, and (2) resulted from the operation of a motor vehicle upon a California highway by the defendant, or by any other person for whose conduct the defendant was liable, unless the liability resulted from the defendant's signing the application of a minor for a driver's license.

116.880. (a) If the judgment (1) was for five hundred dollars ($500) or less, (2) resulted from a motor vehicle accident occurring on a California highway caused by the defendant's operation of a motor vehicle, and (3) has remained unsatisfied for more than 90 days after the judgment became final, the judgment creditor may file with the Department of Motor Vehicles a notice requesting a suspension of the judgment debtor's privilege to operate a motor vehicle.

(b) The notice shall state that the judgment has not been satisfied, and shall be accompanied by (1) a fee set by the department, (2) the judgment of the court determining that the judgment resulted from a motor vehicle accident occurring on a California highway caused by the judgment debtor's operation of a motor vehicle, and (3) a declaration that the judgment has not been satisfied. The fee shall be used by the department to finance the costs of administering this section and shall not exceed the department's actual costs.

(c) Upon receipt of a notice, the department shall attempt to notify the judgment debtor by telephone, if possible, otherwise by certified mail, that the judgment debtor's privilege to operate a motor vehicle will be suspended for a period of 90 days, beginning 10 days after receipt of notice by the department from the judgment creditor, unless satisfactory proof, as provided in subdivision (e), is provided to the department before that date.

(d) At the time the notice is filed, the department shall give the judgment creditor a copy of the notice, which shall indicate the filing fee paid by the judgment creditor, and shall include a space to be

signed by the judgment creditor acknowledging payment of the judgment by the judgment debtor. The judgment creditor shall mail or deliver a signed copy of the acknowledgment to the judgment debtor once the judgment is satisfied.

(e) The department shall terminate the suspension, or the suspension proceedings, upon the occurrence of any of the following:

(1) Receipt of proof that the judgment has been satisfied, either (A) by a copy of the notice required by this section signed by the judgment creditor acknowledging satisfaction of the judgment, or (B) by a declaration of the judgment debtor stating that the judgment has been satisfied.

(2) Receipt of proof that the judgment debtor is complying with a court-ordered payment schedule.

(3) Proof that the judgment debtor had insurance covering the accident sufficient to satisfy the judgment.

(4) A deposit with the department of the amount of the unsatisfied judgment, if the judgment debtor presents proof, satisfactory to the department, of inability to locate the judgment creditor.

(5) At the end of 90 days.

(f) When the suspension has been terminated under subdivision (e), the action is final and may not be reinstituted. Whenever the suspension is terminated, Section 14904 of the Vehicle Code shall apply. Money deposited with the department under this section shall be handled in the same manner as money deposited under subdivision (d) of Section 16377 of the Vehicle Code.

(g) No public agency is liable for any injury caused by the suspension, termination of suspension, or the failure to suspend any person's privilege to operate a motor vehicle as authorized by this section.

Article 9. Administration

116.910. (a) Except as provided in this chapter, no fee or charge shall be collected by any officer for any service provided under this chapter.

(b) All fees collected under this chapter shall be deposited with the treasurer of the city and county or county in whose jurisdiction the court is located.

(c) Six dollars ($6) of each eight dollar ($8) fee and fourteen dollars ($14) of each sixteen dollar ($16) fee charged and collected under subdivision (a) of Section 116.230 shall be deposited by each county in a special account. Of the money deposited in this account:

(1) In counties with a population of less than 4,000,000, a minimum of 50 percent shall be used to fund the small claims advisor service described in Section 116.940. The remainder of these funds shall be used for court and court-related programs. Records of these moneys shall be available for inspection by the public on request.

(2) In counties with a population of at least 4,000,000, not less than

five hundred thousand dollars ($500,000) shall be used to fund the small claims advisor service described in Section 116.940. That amount shall be increased each fiscal year by an amount equal to the percentage increase in revenues derived from small claims court filing fees over the prior fiscal year. The remainder of these funds shall be used for court and court-related programs. Records of these moneys shall be available for inspection by the public on request.

(d) This section and Section 116.940 shall not be applied in any manner that results in a reduction of the level of services, or the amount of funds allocated for providing the services described in Section 116.940, that are in existence in each county during the fiscal year 1989–90. Nothing in this section shall preclude the county from procuring other funding, including state court block grants, to comply with the requirements of Section 116.940.

116.920. (a) The Judicial Council shall provide by rule for the practice and procedure and for the forms and their use in the small claims actions. The rules and forms so adopted shall be consistent with this chapter.

(b) The Judicial Council, in consultation with the Department of Consumer Affairs, shall adopt rules to ensure that litigants receive adequate notice of the availability of assistance from small claims advisors, to prescribe other qualifications and the conduct of advisors, to prescribe training standards for advisors and for temporary judges hearing small claims matters, to prescribe, where appropriate, uniform rules and procedures regarding small claims actions and judgments, and to address other matters that are deemed necessary and appropriate.

116.930. (a) Each small claims division shall provide in each courtroom in which small claims actions are heard a current copy of a publication describing small claims court law and the procedures that are applicable in the small claims courts, including the law and procedures that apply to the enforcement of judgments. The Small Claims Court and Consumer Law California Judge's Bench Book developed by the California Center for Judicial Education and Research is illustrative of a publication that satisfies the requirement of this subdivision.

(b) Each small claims division may formulate and distribute to litigants and the public a manual on small claims court rules and procedures. The manual shall explain how to complete the necessary forms, how to determine the proper court in which small claims actions may be filed, how to present and defend against claims, how to appeal, how to enforce a judgment, how to protect property that is exempt from execution, and such other matters that the court deems necessary or desirable.

(c) If the Department of Consumer Affairs determines there are sufficient private or public funds available in addition to the funds available within the department's current budget, the department, in cooperation with the Judicial Council, shall prepare a manual or information booklet on small claims court rules and procedures. The

department shall distribute copies to the general public and to each small claims division.

(d) If funding is available, the Judicial Council, in cooperation with the Department of Consumer Affairs, shall prepare and distribute to each judge who sits in a small claims court a bench book describing all state and federal consumer protection laws reasonably likely to apply in small claims actions.

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in each municipal and justice court clerk's office, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors shall not appear in court as an advocate for any party.

(f) Advisors and other court employees and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided under this chapter.

116.950. (a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties. The advisory committee shall report its findings and recommendations to the Judicial Council and the Legislature.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives, appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of the Business, Transportation, and Housing Agency.

(6) Six judges of the municipal court or justice court who have had extensive experience as judges of small claims court, appointed by the Judicial Council.

(7) One representative appointed by the Governor.

(8) Two clerks of the court, appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed

SEC. 4. Section 134 of the Code of Civil Procedure is amended to read:

134. (a) The courts shall be closed for the transaction of judicial business on judicial holidays, except for the following purposes:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict.

(2) To receive a verdict or discharge a jury.

(3) For the conduct of arraignments and the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

(4) For the conduct of Saturday small claims court sessions pursuant to the Small Claims Act, Chapter 5.5 (commencing with Section 116.110).

(b) Injunctions and writs of prohibition may be issued and served on any day.

SEC. 5. Section 904.2 of the Code of Civil Procedure is amended to read:

904.2. An appeal may be taken from a municipal or justice court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt which is made final and conclusive by Section 1222.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order changing or refusing to change the place of trial.

(d) 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.

(e) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(f) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(h) From an order appointing a receiver.

(i) From a judgment of the small claims court.

SEC. 6. Section 904.3 of the Code of Civil Procedure is repealed.

SEC. 7. Section 904.5 of the Code of Civil Procedure is amended to read:

904.5. Appeals from the small claims division of a justice or municipal court shall be governed by the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1).

SEC. 8. Section 916 of the Code of Civil Procedure is amended to read:

916. (a) Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

(b) When there is a stay of proceedings other than the enforcement of the judgment, the trial court shall have jurisdiction of proceedings related to the enforcement of the judgment as well as any other matter embraced in the action and not affected by the judgment or order appealed from

SEC. 9. Section 1141.11 of the Code of Civil Procedure is amended to read:

1141.11. (a) In each superior court with 10 or more judges, all at-issue civil actions pending on or filed after the operative date of this chapter shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand

dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with less than 10 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(c) In each municipal court district, the municipal court district may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter in such judicial district, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. This section does not apply to any action in small claims court, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161 of this code.

(d) In each municipal court district which has adopted judicial arbitration pursuant to subdivision (c), all civil actions pending on or after July 1, 1990, which involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court, subject to disqualification for cause as specified in Sections 170.1 and 170.6.

The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

For the purposes of this subdivision, the term "single defendant" means (1) an individual defendant, whether a person or an entity, (2) two or more persons covered by the same insurance policy applicable to the motor vehicle collision, or (3) two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision. The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

(e) The provisions of this chapter shall not apply to those actions filed in a superior or municipal court which has been selected pursuant to Section 1823.1 and is participating in a pilot project pursuant to Title 1 (commencing with Section 1823) of Part 3.5; provided, however, that any superior or municipal court may provide by local rule that the provisions of this chapter shall apply to actions pending on or filed after July 1, 1979. Any action filed in

such court after the conclusion of the pilot project shall be subject to the provisions of this chapter.

(f) No local rule of a superior court providing for judicial arbitration may dispense with the conference required pursuant to Section 1141.16.

SEC. 10. Section 818.9 of the Government Code is amended to read:

818.9. A public entity, its employees, and volunteers shall not be liable because of any advice provided to small claims court litigants pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

SEC. 11. Section 73112 of the Government Code is amended to read:

73112. Mediators in small claims proceedings in San Bernardino County under the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure) shall receive for their services such fees, not to exceed one hundred dollars ($100) per day, as may be established by the court upon authorization and approval of the board of supervisors.

SEC. 12. Section 16370.5 of the Vehicle Code is amended to read:

16370.5. The department shall suspend the privilege of any person to operate a motor vehicle as specified in Section 116.870 of the Code of Civil Procedure. Except as provided in this section, an action brought under Section 116.870 of the Code of Civil Procedure shall not be governed by Chapter 2 (commencing with Section 16250) of Division 7.

SEC. 13. The Legislature has incorporated certain rules of court into the Small Claims Act to address statutory gaps that existed on December 31, 1990. By this action, the Legislature does not intend to detract from the Judicial Council's continuing power and duty to adopt uniform rules of court and to adopt or approve uniform court forms consistent with the Small Claims Act. Nothing in this act is intended or should be construed to limit or eliminate any power, duty, or function of the Judicial Council.

CHAPTER 1306

An act to amend Sections 17202.1 and 17409 of, and to add Section 18322 to, the Financial Code, relating to escrow.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 17202.1 of the Financial Code is amended to read:

17202.1. An applicant for an escrow agent's license or a licensee

may, in lieu of and subject to the same conditions as the bond required by Section 17202, deposit with the commissioner a cash bond in the sum specified in Section 17202. Evidence of the cash bond shall be a deposit in the amount specified in Section 17202 in a bank or investment certificates of industrial loan companies, authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or an investment certificate or share account in the amount specified in Section 17202 issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Those deposits, certificates, or accounts shall be assigned to and accepted and maintained by the commissioner, upon those terms as the commissioner may prescribe, until released by the commissioner, and shall not be deemed an asset of the applicant or licensee for the purpose of complying with Section 17210.

SEC. 2. Section 17409 of the Financial Code is amended to read:

17409. All moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency, shall be deposited and maintained in a noninterest-bearing demand or checking account in a bank, a state or federal savings bank, or a state or federal savings and loan association or in a noninterest-bearing account subject to immediate withdrawal in an industrial loan company which is insured by the Federal Deposit Insurance Corporation and which has been approved to receive those moneys by the commissioner. Thereafter, these moneys may be deposited in an interest-bearing account in a bank, a state or federal savings bank, a state or federal savings and loan association, an industrial loan company approved to receive those moneys by the commissioner, or a state or federal credit union, if the depositor is qualified for membership under the bylaws of that credit union, and the moneys are kept separate, distinct, and apart from funds belonging to the escrow agent. All such funds, when deposited, are to be designated as "trust funds," "escrow accounts," or under some other appropriate name indicating that the funds are not the funds of the escrow agent.

Upon request of the commissioner, a licensee shall furnish to the commissioner an authorization for examination of financial records of any trust funds or escrow accounts, maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

SEC. 3. Section 18322 is added to the Financial Code, to read:

18322. An industrial loan company shall obtain the written consent of the commissioner prior to accepting any moneys pursuant to Section 17409. The commissioner may, by regulation or order, impose or revise limitations and requirements, including, but not limited to, liquidity and reserve requirements, as, in the opinion of the commissioner, are necessary for safety and soundness. The commissioner shall rescind that consent if, at any time, the industrial loan company exceeds the limitations or fails to adhere to the requirements imposed or, if in the opinion of the commissioner, the

continued acceptance of those moneys would pose a threat to the safety and soundness of the company.

CHAPTER 1307

An act to amend Section 5240 of the Corporations Code, to repeal Chapter 6 (commencing with Section 94600) of Part 59 of the Education Code, and to add and repeal Part 7 (commencing with Section 18500) to Division 9 of, and to repeal Section 18502.5 of, the Probate Code, and to add Part 7 (commencing with Section 18500) to Division 9 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, relating to the Uniform Management of Institutional Funds Act.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 5240 of the Corporations Code is amended to read:

5240. (a) This section applies to all assets held by the corporation for investment. Assets which are directly related to the corporation's public or charitable programs are not subject to this section.

(b) Except as provided in subdivision (c), in investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the corporation's investments, the board shall do the following:

(1) Avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the corporation's capital.

(2) Comply with additional standards, if any, imposed by the articles, bylaws or express terms of an instrument or agreement pursuant to which the assets were contributed to the corporation.

(c) No investment violates this section where it conforms to provisions authorizing the investment contained in an instrument or agreement pursuant to which the assets were contributed to the corporation. No investment violates this section or Section 5231 where it conforms to provisions requiring the investment contained in an instrument or agreement pursuant to which the assets were contributed to the corporation.

(d) In carrying out duties under this section, each director shall act as required by subdivision (a) of Section 5231, may rely upon others as permitted by subdivision (b) of Section 5231, and shall have the benefit of subdivision (c) of Section 5231, and the board may delegate its investment powers as permitted by Section 5210.

(e) Nothing in this section shall be construed to preclude the application of the Uniform Management of Institutional Funds Act,

Part 7 (commencing with Section 18500) of Division 9 of the Probate Code, if that act would otherwise be applicable, but nothing in the Uniform Management of Institutional Funds Act alters the status of governing boards, or the duties and liabilities of directors, under this part.

SEC. 2. Chapter 6 (commencing with Section 94600) of Part 59 of the Education Code is repealed.

SEC. 3. Part 7 (commencing with Section 18500) is added to Division 9 of the Probate Code, to read:

PART 7. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

18500. This part may be cited as the Uniform Management of Institutional Funds Act.

18501. As used in this part:

(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(b) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

(c) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(d) "Historic dollar value" means the aggregrate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the endowment fund at the time it is made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the endowment fund.

(e) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(f) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (1) a fund held for an institution by a trustee that is not an institution or (2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

18502. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 18506. This section does not limit the authority of the

governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

18502.5. (a) With respect to real property assets of an endowment fund, appropriations by the governing board pursuant to Section 18502 shall be limited until January 1, 1994, to so much of the realized net appreciation in the fair value of the real property assets of the endowment fund over the historic dollar value of those assets as is prudent under the standard established by Section 18506.

(b) Appropriations made pursuant to Section 18502 and this section shall be based upon an average fair value covering a period of up to the five preceding fiscal years of the institution and shall be set at any reasonable date prior to each fiscal year.

(c) This section shall remain in effect only until January 1, 1994, and on that date is repealed unless a later enacted statute, which is enacted before that date, deletes or extends that date.

18503. (a) Section 18502 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(b) If the gift instrument includes a designation of the gift as an endowment or a direction or authorization to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction or authorization that contains other words of similar meaning:

(1) A restriction on the expenditure of net appreciation need not be implied solely from the designation, direction, or authorization, if the gift instrument became effective before the Uniform Management of Institutional Funds Act became applicable to the institution.

(2) A restriction on the expenditure of net appreciation may not be implied solely from the designation, direction, or authorization, if the gift instrument becomes effective after the Uniform Management of Institutional Funds Act became applicable to the institution.

(c) The effective dates of the Uniform Management of Institutional Funds Act are the following:

(1) January 1, 1974, with respect to a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities.

(2) January 1, 1991, with respect to an institution not described in paragraph (1).

18504. In addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations set forth in the applicable gift instrument, may do any or all of the following:

(a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages,

deeds of trust, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations or partnerships, and obligations of any government or subdivision or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

18505. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may do the following:

(a) Delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds.

(b) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act.

(c) Authorize the payment of compensation for investment advisory or management services.

18506. (a) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, and delegating investment management for the benefit of an institution, the members of the governing board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like

capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the institution. In the course of administering the fund pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(b) In exercising judgment under this section, the members of the governing board shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long-term net appreciation, as well as the probable safety of funds.

18507. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the superior court of the county in which the principal activities of the institution are conducted, or other court of competent jurisdiction, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. No court has jurisdiction to release a restriction on an institutional fund under this part unless the Attorney General is a party to the proceedings. If the court finds that the restriction is obsolete or impracticable, it may by order release the restriction in whole or in part. A release under this subdivision may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.

18508. Nothing in this part alters the status of governing boards, or the duties and liabilities of directors, under other laws of this state.

18509. Nothing in this part limits the application of any law relating to the expenditure of public funds.

SEC. 5. Section 4 of this act shall become operative on the operative date of the Probate Code added by Chapter 79 of the Statutes of 1990.

SEC. 6. Notwithstanding any provision of law to the contrary, Part 7 (commencing with Section 18500) of Division 9 of the Probate Code, as added by Section 3 of this act, shall remain in effect only until the existing Probate Code is repealed on July 1, 1991, and on that date is repealed with the other provisions of the existing Probate Code, unless a later enacted statute, which is enacted before July 1, 1991, deletes or extends that date.

CHAPTER 1308

An act to amend Section 11746 of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 11746 of the Insurance Code is amended to read:

11746. The commission shall evaluate, in its entirety, the present workers' compensation insurance ratemaking process and the relative effectiveness of workers' compensation insurance ratemaking systems in other states, and other similar matters affecting workers' compensation insurance ratemaking as the commission deems appropriate. The commission shall include an analysis of all aspects of the current system by which minimum rates are established in California, including an analysis of the extent to

which this system fosters or discourages competition between insurers. It shall include an analysis of the states which use an exclusive state fund to provide workers' compensation insurance to employers, and the advantages and disadvantages of establishing an exclusive state fund in California. It shall also include an analysis of whether the functions currently performed by a licensed rating organization should instead be performed by the Department of Insurance. It shall also include an analysis of whether public self-insured employers should be permitted to purchase aggregate excess insurance from insurers admitted to transact workers' compensation insurance in California and whether Section 703.5 should be modified or repealed.

The commmission shall consider in its evaluation the extent to which the present California workers' compensation ratemaking system and proposed alternatives meet the following goals:

(a) Provides appropriate and expeditious claim services to injured employees.

(b) Assures security of the payment of benefits from the insurer to injured workers.

(c) Provides financial incentives to insured employers to maintain safe operations.

(d) Provides the lowest net cost to insured employers consistent with the protection and services provided and the losses and expenses incurred.

(e) Provides a fair and equitable distribution of the costs of the system to insured employers reflecting, to the extent consonant with sound principles of insurance, the actual losses and expenses of individual employers.

(f) Encourages availability of insurance to all sizes and classifications of employers to assure a stable, predictable, and competitive insurance market.

(g) A reasonable rate of return to insurers.

CHAPTER 1309

An act to amend Section 14681.5 of the Government Code, to amend Section 4 of Chapter 1266 of the Statutes of 1982 and Section 4 of Chapter 1190 of the Statutes of 1983, and to repeal Section 4 of Chapter 835 of the Statutes of 1981, relating to state real property.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 14681.5 of the Government Code is amended to read:

14681.5. (a) Whenever the Director of Corrections, the Director of the Youth Authority, or the Director of General Services acting on behalf of either director, decides either to go out to bid to construct a state building, expand an existing building, expand the use of an existing building, or enter into a lease of an existing building, he or she shall notify in writing, at least 60 days prior to going out to bid or entering into a lease, all of the following officials of his or her intent to construct, expand, or lease the building, along with a description of the location of the building:

(1) Each Member of the Legislature whose district encompasses the location of the building to be constructed, expanded, or leased or whose district encompasses the location of the building to be relocated when the relocation is to another member's district.

(2) The clerk of the county board of supervisors in the county in which the building is to be constructed, expanded, or leased.

(3) If the building is to be constructed, expanded, or leased within a city, the city clerk and the mayor of the city.

(b) In those instances where either the Director of Corrections or the Director of the Youth Authority is exempt from the bidding process, that director, or the Director of General Services if he or she is acting on behalf of either director, shall notify the clerk of the legislative body of the affected agency described in subdivision (a), in writing, at least 60 days prior to the construction, expansion, or lease of a building.

SEC. 2. Section 4 of Chapter 835 of the Statutes of 1981 is repealed.

SEC. 3. Section 4 of Chapter 1266 of the Statutes of 1982 is amended to read:

Sec. 4. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, is hereby authorized to exchange, or to sell for current market value, upon those terms, conditions and with such reservation and exceptions which in his or her opinion may be in the best interest of the state, all or part of the following described property:

PARCEL 1. Approximately 0.85 acre of land being a portion of the Tahoe State Recreation Area, located approximately one mile northeasterly of Tahoe City at Star Harbor in the County of Placer.

PARCEL 2. Approximately 9 acres lying easterly of the Sacramento River and northerly of Old Town Sacramento State Historic Park, a portion of which was formerly the PG&E Steam Generation Plant, within the City and County of Sacramento.

PARCEL 4. Approximately 0.80 acre of land being a portion of South Carlsbad State Beach, located off Highway 1 in the County of San Diego.

SEC. 4. Section 4 of Chapter 1190 of the Statutes of 1983 is amended to read:

Sec. 4. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, is hereby authorized to convey or exchange upon those terms, conditions, and with such reservations and exceptions which in his or her opinion may be in the best interest of the state, all or part of the following described property:

PARCEL 2. Approximately 1.02 acres being a portion of Chino Hills located adjacent to the westerly boundary of Baldwin Company Ltd. at the terminus of Valley Center Drive in the City of Yorba Linda, Orange County.

PARCEL 3. Approximately 10.01 acres and the public pier at Avila State Beach, San Luis Obispo County.

SEC. 5. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 1.0 acre, with a structure used by the California Department of Forestry and Fire Protection and known as Red Top Lookout and being a portion of the southwest quarter of Section 22, Township 9 South, Range 20 East, Mount Diablo Base and Meridian, Madera County.

Parcel 2. Approximately 0.62 acre, with a structure used as office space by the Department of Motor Vehicles at 490 Starr Street, Turlock, Stanislaus County.

SEC. 6. The Director of General Services, with the approval of the State Public Works Board, may sell or lease for current market value only, all or part of the following property:

Parcel 1. Approximately 0.74 acre, with a structure used as office space by the Employment Development Department at 1924 "Q" Street, Bakersfield, Kern County.

Parcel 2. Approximately 0.6 acre, with a structure used as office space by the Employment Development Department at 83-151 Requa Avenue, Indio, Riverside County.

Parcel 3. Approximately 0.98 acre, with a structure used as office space by the Employment Development Department at 1325 Pine Street, Redding, Shasta County.

Parcel 4. Approximately 1.18 acres, with a structure used as office space by the Employment Development Department at 3460 Orange Street, Riverside, Riverside County.

SEC. 7. (a) Notice of every public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, or lease of the parcels described in this act are exempt from Chapters 3 (commencing with Section 21100) to 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 8. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels, subject to appropriation therefor by the Legislature, from the proceeds of that deposition.

(b) After deducting the amount necessary for the purposes of subdivision (a), the net proceeds of any moneys received from the disposition of the parcels described in this act shall be deposited in the General Fund, except as follows:

(1) The net proceeds of any moneys received from the disposition of Parcel 5 described in Section 1 of this act shall be deposited in the State Transportation Fund.

(2) The net proceeds of any moneys received from the disposition of Parcels 1, 2, 3, and 4 of Section 6 of this act shall be deposited in the Employment Development Department Building Fund.

(3) The proceeds of any money received from the exchange of the parcel described in Section 10 of this act shall be deposited into the State Park and Recreation Fund and shall be available for appropriation for state park purposes.

(4) The proceeds from the lease of the parcel described in Section 11 of this act shall be deposited into the Low Level Radioactive Waste Disposal Fund.

SEC. 9. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the rights to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed which the director, after consultation

with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

SEC. 10. Notwithstanding any other provision of law, the Director of General Services, with the approval of the Director of Parks and Recreation, may exchange for property of similar value or property plus monetary consideration and upon terms and conditions and subject to reservations and exceptions that the Director of General Services deems are in the best interest of the state, approximately 0.39 acre that adjoins the southeasterly boundary of 850 Palisades Beach Road, Santa Monica, Los Angeles County.

SEC. 11. The State Director of Health Services, with the approval of the Director of General Services, is authorized to lease real property to construct, operate, and close a low level radioactive waste facility, for any period of time consistent with Section 25878 of the Health and Safety Code, and upon such terms and conditions as the State Director of Health Services deems are in the best interests of the state, in all or any part of approximately 1,000 acres being in the County of San Bernardino in Sections 26, 27, 34, and 35, Township 9 North, Range 19 East, San Bernardino Baseline and Meridian.

CHAPTER 1310

An act to amend Section 14085.5 of the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. The Legislature finds and declares that it is essential to clarify legislative intent regarding, and to expedite the implementation of, Section 14085.5 of the Welfare and Institutions

Code, in order that the disproportionate share hospitals that comprise California's health care safety net can meet statutory deadlines and be assured of equitable and predictable program policies.

SEC. 2. Section 14085.5 of the Welfare and Institutions Code is amended to read:

14085.5. (a) Each disproportionate share hospital contracting to provide services under this article or contracting with a county organized health system, and which has or would have met the state criteria developed pursuant to the federal Medicaid requirements regarding disproportionate hospitals for the three most recent years, may, in addition to the rate of payment provided for in the contract entered into under this article, receive supplemental reimbursement to the extent provided for in this section.

(b) (1) (A) A hospital qualifying pursuant to subdivision (a) shall submit documentation regarding debt service on revenue bonds used for financing the construction, renovation, or replacement of hospital facilities, including buildings and fixed equipment.

(B) Qualified hospitals may submit debt service instruments to the department and to the commission regarding debt issued for new capital projects.

(C) Eligible projects shall include those new capital projects funded by new debt for which final plans have been submitted to the Office of the State Architect and the Office of Statewide Health Planning and Development after July 1, 1989, and prior to June 30, 1994.

(D) The department shall confirm in writing hospital and project eligibility for partial financing under this section.

(E) Department advisory letters, conditioned on hospital and project conformity to plans, may be requested by hospitals prior to final plan submission.

(F) (1) Capital projects receiving partial financing under this section shall finance the upgrading or construction of buildings and equipment to a level required by currently accepted medical practice standards, including projects designed to correct Joint Commission on Accreditation of Hospitals and Health Systems fire and life safety, seismic, or other related regulatory standards.

(2) Projects may also expand service capacity as needed to maintain current or reasonably foreseeable necessary bed capacity to meet the needs of Medi-Cal beneficiaries after giving consideration to bed capacity needed for other patients, including unsponsored patients.

(3) (A) Debt service shall only be paid for projects, or for that portion of projects, that are available and accessible to patients treated under this article or by successor programs.

(B) Each project shall cost at least five million dollars ($5,000,000) or, if less than five million dollars ($5,000,000), the project shall be necessary for retention of federal and state licensing and certification and for meeting fire and life safety, seismic, or other related regulatory standards.

(4) Supplemental reimbursement payments shall commence no later than 30 days after receipt of the certificate of occupancy by the hospital.

(5) (A) The state shall pledge to, and agree with, the holders of any revenue bonds issued to finance projects qualifying under this section that until debt service on the revenue bonds is fully paid, or until the supplemental rate is no longer required as provided by this section, the state will not limit or alter the rights vested in the hospital to receive supplemental reimbursement pursuant to this section.

(B) The state shall pledge, and the hospital shall, as a condition of encumbering supplemental reimbursement payments received pursuant to this section, pledge that supplemental reimbursement payments shall be used for the payment of debt service on the revenue bonds. The hospital shall include its pledge and the agreement with the state in any agreement with the holders of the revenue bonds.

(c) The hospital's supplemental reimbursement for a project qualifying pursuant to subdivisions (a) and (b) shall be calculated as follows:

(1) For any fiscal year for which the hospital is eligible to receive reimbursement, the hospital shall report to the department the amount of debt service on the revenue bonds issued to finance the project.

(2) The department shall use the Medicaid inpatient utilization rate as determined pursuant to Section 4112 of the Omnibus Budget Reconciliation Act of 1987 to determine the ratio of the hospital's total paid Medi-Cal patient days to total patient days.

(3) (A) (i) The supplemental Medi-Cal reimbursement to the hospital for each fiscal year shall equal the amount determined annually in paragraph (1) multiplied by the percentage figure determined in paragraph (2). In no instance shall the percentage figure determined pursuant to the ratio derived under paragraph (2) be decreased by more than 10 percent of the initial ratio determined pursuant to paragraph (2) prior to the retirement of the debt.

(ii) Hospitals whose Medi-Cal ratio falls below 90 percent of the initial level established at the point of final plan submission shall at least maintain the volume of Medi-Cal utilization which was recorded at the time of final plan submission unless forces beyond the hospital's control have decreased the absolute volume of care.

(B) (i) In no instance shall the total amount of reimbursement received under this section combined with that received from all other sources dedicated exclusively to debt service exceed 100 percent of the debt service over the life of the loan.

(ii) A hospital qualifying for and receiving supplemental Medi-Cal reimbursement shall continue to receive the reimbursement until the qualifying loan is paid off, or the hospital is terminated as a Medi-Cal selective contractor and the hospital does not contract with a county organized health system.

(iii) It is the intent of the Legislature that the state and the qualifying hospital shall negotiate in good faith for rates sufficient to ensure continued hospital participation in the program and to ensure adequate access to services for Medi-Cal beneficiaries.

(iv) The state shall not terminate a contract with a qualified provider for the purpose of terminating the capital supplement.

(v) If negotiations fail to permit continuation of a contract of a hospital qualifying for the supplemental Medi-Cal reimbursement, the supplemental Medi-Cal reimbursement shall cease as of the date of discontinuance of the selective provider contract.

(4) In order to ensure provision of qualified supplemental

payments to disproportionate share hospitals contracting with county organized health systems, the department shall make the qualified supplemental payments directly to these hospitals.

(5) Funding for these supplemental payments shall be separately appropriated as a line item in the Budget Act for each fiscal year for any project for which a request for payment is received after April 1 of each fiscal year. The department shall request a deficiency appropriation if funds for the payment are not appropriated in the Budget Act.

(6) The department shall provide the Department of Finance, the Legislative Analyst, and the Joint Legislative Budget Committee with its estimate of the budget year costs of the supplemental reimbursement program, on January 10 and May 15 of each year.

(7) (A) Paragraphs (1) to (4), inclusive, shall be incorporated into an amendment to any contract entered into by a hospital pursuant to this article.

(B) (i) Any contract amendment required by paragraph (A) shall include a payment methodology based on inpatient hospital services rendered to Medi-Cal patients, either on a per diem basis, a per-discharge basis, or any other federally permissable basis, and which is consistent with the hospital's Medi-Cal contract.

(ii) The payment methodology specified in clause (i) shall ensure that the hospital, on an annual basis, receives the amount of supplemental reimbursement calculated pursuant to paragraph (3), excluding only the federal portion of costs which have been determined by the federal government not to be allowable under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code).

(iii) The payment methodology specified in clause (i) shall contain a retrospective adjustment mechanism to ensure that, regardless of the payment methodology, the department shall pay the hospital the full amount owed to the hospital for the year, as determined pursuant to this section.

(8) In negotiating contracts with hospitals receiving payments under this section, the commission shall take appropriate steps to ensure the duplicate payments are not made to the hospital for the debt service costs relating to the eligible project.

(d) All reimbursement received by a hospital pursuant to this section shall be placed in a special account, the funds in which shall be used exclusively for the payment of debt service on the revenue bonds issued to finance the project.

(e) If contracting under this section is superceded by other arrangements for payment of inpatient hospital services, the successor program shall include separate reimbursement, as determined pursuant to paragraph (3) of subdivision (c).

(f) (1) For purposes of this section, "revenue bonds" are defined as that term is defined in subdivision (c) of Section 15459 of the Government Code, and shall also include general obligation bonds

issued by or on behalf of eligible hospitals for projects of more than five million dollars ($5,000,000).

(2) (A) The aggregate principal amount of general obligation bonds to be issued as revenue bonds under this subdivision for the anticipated allowable portion of projects shall not, in any fiscal year, exceed a statewide amount established in the Medi-Cal estimates submitted to the fiscal committees of the Legislature pursuant to Section 14100.5, or as otherwise statutorily determined by the Legislature.

(B) In preparing Medi-Cal estimates, the department shall consider, but need not include, all actual and anticipated projects.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section, and, if necessary to obtain federal approval, the department may, for federal purposes, limit the program to those costs which are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code), subject to paragraph (2).

(2) The department shall continue to be responsible for the reimbursement of eligible providers from state funds for the amount of supplemental reimbursement pursuant to paragraph (3) of subdivision (c), excluding only the federal portion of costs which have been determined by the federal government not to be allowable under Title XIX of the federal Social Security Act.

(h) (1) A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section.

(2) The department shall submit claims for federal financial participation for all elements of the supplemental reimbursements which are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures which are allowable under federal law.

(4) (i) The department may require that hospitals receiving supplemental reimbursement submit data necessary for the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(ii) Unless otherwise permitted by federal law, the total statewide payment under the selective provider contracting program, in the aggregate on an annual basis, shall not exceed an amount that would otherwise have been paid under the Medi-Cal program on a statewide basis for the same services, in the aggregate on an annual basis, if the contracting program were not implemented.

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 the timely completion of critically needed facilities and to maintain access to a key link in the state's health care safety net, the disproportionate share hospitals, it is necessary that this act take effect immediately.

CHAPTER 1311

An act to amend Sections 50710, 50736, 50771.1, 50882, 50883.5, 50888.3, 50889, 50889.5, 50891, 50893, 50893.3, 50893.7, and 50895 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 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 50710 of the Health and Safety Code is amended to read:

50710. The Director of Housing and Community Development may contract with school districts, housing authorities, health agencies, and other appropriate local public and private nonprofit agencies, for the procurement, or construction of housing or shelter and to obtain services for migratory agricultural workers in the fields of education and sanitation, to obtain day care services for the children of those workers, and the director may adopt regulations as the director deems necessary in order to provide that housing service. Notwithstanding any other provision of law, contracts made pursuant to this chapter are deemed to be for local assistance.

SEC. 2. Section 50736 of the Health and Safety Code is amended to read:

50736. (a) Not less than 30 percent of the units in each rental housing development consisting of ten or more units which receives any funds pursuant to this chapter shall be available on a priority basis to or occupied by eligible households pursuant to the agreement required by Section 50739, and not less than 20 percent of all the units in each rental housing development shall be available on a priority basis to, or occupied by, very low income households.

(b) Every sponsor shall, with respect to assisted units, conduct an affirmative marketing program, on a continuous basis, which program has been approved by the department or by the agency in cases where the agency provides financing. For the purposes of this subdivision, "affirmative marketing program" means any program approved by the department that is designed to achieve greater access to housing opportunities created by this chapter for eligible households. Such program shall include educational, promotional, and other appropriate activity designed to secure greater housing

opportunities for those households. Where a significant number of persons in a community have limited fluency in the English language, publications implementing an affirmative marketing program in that community shall be provided in the native language of those persons.

(c) Of all assisted units, under this chapter, not less than two-thirds shall be allocated to very low income households and the balance for lower income households.

(d) Elderly or handicapped households shall be allocated not less than 20 percent, nor more than 30 percent, of the assisted units provided pursuant to this chapter. Other handicapped households shall be eligible for assisted units pursuant to this subdivision or subdivision (a), (b), (c), or (e) if they otherwise meet the requirements imposed by those provisions.

(e) Not less than 20 percent of the funds loaned pursuant to this chapter after November 1988 shall be allocated to rural areas.

SEC. 3. The amendments made to subdivision (d) of Section 50736 of the Health and Safety Code by Section 2 of this act shall only apply to any housing development financed from the proceeds of bonds issued pursuant to bond acts adopted by the voters after the effective date of this act.

SEC. 4. 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) Applications for fund commitments shall be accepted by the department at any time. Fund commitments shall be based on a ranking of applications which shall occur at least once every three months until there are insufficient funds available to make commitments according to the ranking. 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 residential 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. 5. Section 50882 of the Health and Safety Code is amended to read:

50882. (a) The Family Housing Demonstration Account is

hereby established in the Rental Housing Construction Fund. The account shall be organized into subaccounts as provided in this chapter. All of the following moneys shall be paid into the account:

(1) Any moneys appropriated and made available by the Legislature for the purposes of the account.

(2) Any moneys which the department receives in repayment or return of loans made from the account, including any interest on those loans.

(3) Any other moneys which may be made available to the department for the purposes of this chapter from any other source or sources.

(b) Notwithstanding Section 13340 of the Government Code, all money in the account is hereby continuously appropriated to the department and shall be utilized for the purposes of Article 1 (commencing with Section 50880) to Article 4 (commencing with Section 50893), inclusive, including administrative expenses of the department for the implementation and operation of the programs created by this chapter. All interest or other increment resulting from investment or deposit of moneys in the account shall be deposited in the account, notwithstanding Section 16305.7 of the Government Code. Moneys in the account are not subject to transfer to any other fund, except as set forth in this chapter, pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund.

(c) Money available for loans in the account shall be utilized and apportioned in accordance with the following percentages unless the terms of the transfers or deposit provide otherwise:

(1) Not less than 25 percent, nor more than 35 percent, shall be utilized for congregate housing developments pursuant to this chapter.

(2) The balance shall be utilized for community housing developments pursuant to this chapter.

SEC. 6. Section 50883.5 of the Health and Safety Code is amended to read:

50883.5. (a) The department may deposit an amount not to exceed 10 percent of the moneys appropriated to the account in a feasibility subaccount in the account. The moneys in that account may be utilized to provide funds, as determined necessary by the department, to ensure the economic feasibility of, and to enable the development of, community housing developments or congregate housing developments assisted under this chapter.

(b) The department may deposit an amount not to exceed 3 percent of the funds appropriated to the account in an emergency reserve subaccount established in the account. The department may expend moneys in this account to defray unanticipated cost increases or revenue shortfalls, as determined by the department, to the extent necessary to maintain the fiscal integrity of the development and maintain affordable rents for eligible households. Notwithstanding

the provisions of Section 53130 which limit the use of allocated bond proceeds for project operating costs, and notwithstanding the provisions of Section 53133, the department may use any amounts available in the account for the purpose of curing or avoiding a sponsor's default on the terms of any loan or other obligation which will jeopardize the financial integrity of a housing development or the department's security in the 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.

(c) The subaccounts established by this section shall be governed by, and be subject to, all of the provisions governing the account.

SEC. 7. Section 50888.3 of the Health and Safety Code is amended to read:

50888.3. The housing component of a community housing development shall include the following features and criteria:

(a) At least 30 percent of the units shall be assisted units, and those assisted units shall be available on a priority basis to, or occupied by, eligible households at affordable rent.

(b) Not less than two-thirds of all assisted units shall, to the extent feasible, be available on a priority basis to, or occupied by, households as defined in Section 50105.

(c) Not less than 20 percent nor more than 30 percent of all assisted units shall be occupied by elderly persons or households and the balance shall be available on a priority basis to, or occupied by, families with one or more children, depending on the size of the dwelling unit.

(d) Each community housing development shall include a range of unit sizes based on the number of bedrooms, including provision of three bedroom or larger units. The assisted units shall consist of substantially the same range of unit sizes as are available in nonassisted units, as determined by the department.

(e) Each community housing development shall include specialized design criteria which implement the purposes of this chapter, including designs and appliances to facilitate child care, designs and devices to facilitate security, and design criteria to meet the needs of elderly or handicapped persons.

SEC. 8. Section 50889 of the Health and Safety Code is amended to read:

50889. The community housing development shall include, to the extent feasible, financial and nonfinancial public assistance and private assistance in its development costs as well as its operating costs, as determined by the department. The department shall adopt regulations which encourage the use of other assistance as identified in this section. The categories of assistance shall include, but not be limited to, all of the following:

(a) Direct financial grants from public and private sources including, but not limited to, Community Development Block Grants, Urban Development Assistance Grants, redevelopment agency grants, or foundation grants.

(b) Direct loans for construction, mortgages, or operational costs from state or local issuances of revenue bonds or redevelopment bonds, or other public or private loans which result in below market rate financing.

(c) Direct nonfinancial considerations, including those required pursuant to Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(d) Indirect financial considerations such as the waiver of local fees, the reduction or elimination of land dedications and impact fees, and the provision of infrastructure costs.

(e) Direct financial assistance from private industry councils and service delivery areas under Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, or Article 3.1 (commencing with Section 11315) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or private sector investment in support of job training, job placement, or self-employment or residents or potential residents.

SEC. 9. Section 50889.5 of the Health and Safety Code is amended to read:

50889.5. Applications for fund commitments shall be accepted by the department at any time. Fund commitments shall be based on a ranking of applications, which shall occur at least once every three months until there are insufficient funds available to commit according to this ranking.

(a) In making this ranking, the department shall give priority to projects which do all of the following:

(1) Serve the greater number of eligible households with the lowest income, as defined in Section 50105, for the greatest period of time above the minimum number of years.

(2) 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.

(3) Complement the implementation of an existing housing program.

(4) Maximize private, local, and other funding sources.

(5) Are economically feasible given local market conditions.

(b) In making funding awards, the department also shall evaluate the capability of the sponsor to own, construct or rehabilitate, and manage the housing development.

SEC. 10. Section 50891 of the Health and Safety Code is amended to read:

50891. In implementing this article, the department shall comply with all of the following requirements:

(a) The department shall apply the requirements and priorities of

subdivisions (a), (b), and (e) of Section 50888.3 and Sections 50887 and 50889.5 in the selection of congregate housing developments for funding.

(b) The procedural and substantive requirements of Article 4 (commencing with Section 50893) shall apply to congregate housing, to the maximum extent feasible, as determined by the department, given the nature of congregate housing.

SEC. 11. Section 50893 of the Health and Safety Code is amended to read:

50893. The department shall make, or undertake commitments to make, construction or rehabilitation loans, including land acquisition costs, and mortgage loans in accordance with subdivision (a) for new construction, and subdivision (b) for rehabilitation, to sponsors to finance the development of community housing developments and congregate housing developments. The development cost payments may be provided as loans to be repaid at 3 percent interest and payments of principal or interest, or both, may be deferred or made payable over a period of time. For these purposes, the department shall enter into regulatory agreements and other agreements, and security documents, with the sponsors receiving funds from the fund. Upon the recordation, the regulatory agreement and all other agreements or documents included or incorporated by reference within the regulatory agreement shall constitute enforceable restrictions upon the property for the original term of the loan.

(a) Loans to sponsors for new construction of community housing developments or congregate housing developments shall be for terms not less than 40 years. After 30 years from the time the loans are 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) Loans made to sponsors of community housing developments or congregate housing developments for acquisition and rehabilitation shall be for terms of not less than 30 years. Loans made to sponsors of community housing developments or congregate housing developments for rehabilitation shall only be for terms of not less than 20 years. However, the term shall not exceed the useful life of the community housing development or congregate housing development for which the loan is made. The sponsor may elect to begin to repay the loan at any time in accordance with a payment plan, as determined by the department, that will maintain the rents at levels affordable to eligible households.

SEC. 12. Section 50893.3 of the Health and Safety Code is amended to read:

50893.3. (a) The cost of development of any common portions of the development shall be allocated to the fund in the same ratio as the ratio between assisted and nonassisted units in the community housing development.

(b) Not more than 50 percent of the cost of the child care center

and related play area shall be paid for from the account, notwithstanding the ratio between assisted and nonassisted units. However, if the department finds that sufficient funding is not available to pay for the remainder of the cost, the department may pay for the balance needed from the account.

(c) 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 rental 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.

(d) The department annually may approve a reduction in the number of assisted units to less than the number agreed upon, or less than 30 percent, only if the department determines that it is necessary to maintain the fiscal integrity of the development. If the number of units occupied by eligible households in the community housing development ever falls below the number agreed to by the department and sponsor, then the next units which become available for occupancy shall be made available on a priority basis to eligible households, as required, until the number of units so occupied equals at least the number specified in the agreement.

SEC. 13. Section 50893.7 of the Health and Safety Code is amended to read:

50893.7. The regulatory agreement shall contain at least the following provisions, and any others determined necessary by the department, each of which is a binding requirement:

(a) Substantially the same provisions as are required by Sections 50766 and 50767, except that they shall be applicable to sponsors and developments assisted pursuant to this chapter and the requirements of this chapter.

(b) A description of, and requirements governing, all social and economic components of the community housing development and the sponsor's affirmative responsibilities with respect to the components.

(c) A provision making the convenants and conditions of the agreement binding upon successors in interest of the sponsor.

(d) For sponsors other than a governmental agency, a provision limiting the distribution of the sponsor's earnings to an annual amount no greater than 8 percent of the sponsor's actual investment, excluding unaccrued liabilities of the sponsor, in the assisted units of the community housing development. The sponsor, if other than a governmental agency, may elect to maintain a debt service coverage ratio of 115 percent.

(e) Provisions setting forth the terms of, and the implementation of, occupancy agreements, including provisions for eviction for

"good cause." "Good cause" as used in this subdivision, means the allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(f) Provisions for grievance hearings and other resident protections which ensure reasonable security of continued occupancy.

(g) Provisions to ensure that if an eligible household's income exceeds the standard pursuant to which it was accepted for tenancy, that fact alone shall neither constitute cause for the eviction nor be a violation of the sponsor's loan agreement.

(1) 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.

(2) 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. The 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.

(h) 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.

(i) 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.

SEC. 14. Section 50895 of the Health and Safety Code is amended to read:

50895. The department may adopt, amend, or repeal emergency regulations to implement this chapter with respect to loans made with funds allocated pursuant to Section 53130. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the

public peace, health, safety, or general welfare within the meaning, or purposes, of Section 11346.1 of the Government Code. This authority shall remain in effect until June 30, 1992.

This section shall remain in effect only until June 30, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1992, deletes or extends that date.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act extends emergency regulatory authority necessary to implement and continue operation of programs authorized by the Housing and Homeless Bond Act of 1988, and makes necessary changes to the Family Housing Demonstration Program, Farm Worker Housing Program, and Rental Housing Construction Program which improve program efficiencies. These programs fulfill immediate and critical housing needs throughout California. It is, therefore, necessary that this act take immediate effect.

CHAPTER 1312

An act to amend Sections 15853 and 27281 of the Government Code and to amend Section 37001 of the Health and Safety Code, relating to land.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 15853 of the Government Code is amended to read:

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

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

(c) Notwithstanding any other provisions of law, all land and other real property to be acquired by or for any state agency, other than the Department of Transportation, the Department of Water Resources, the State Reclamation Board, the Department of Fish and

Game, the Wildlife Conservation Board, the Public Employees' Retirement System, the State Teachers' Retirement System, the Department of Housing and Community Development, and the State Lands Commission, except for property to be acquired for the State Lands Commission pursuant to an appropriation from the General Fund, shall be acquired by the State Public Works Board in accordance with the provisions of the Property Acquisition Law.

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

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

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

(4) Six months from the date of the notification required by paragraph (3), the board shall notify those persons specified in

paragraph (3) of the status of the acquisition.

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

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

SEC. 2. Section 27281 of the Government Code is amended to read:

27281. Deeds or grants conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes shall not be accepted for recordation without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed or grant. If a certificate of acceptance is used, it shall be in substantially the following form:

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from _____ to _____, a political corporation and/or governmental agency is hereby accepted by order of the

_____ on _____,
(legislative body) (date)

(or by the undersigned officer or agent on behalf of the _____
(legislative body)

pursuant to authority conferred by resolution of the _____ adopted on _____,)
(legislative body) (date)

and the grantee consents to recordation thereof by its duly authorized officer.

Dated _____ By _____

A political corporation or governmental agency, by a general resolution, may authorize one or more officers or agents to accept and consent to such deeds or grants.

In cases where the county tax collector files purchaser's deeds with respect to a sale for defaulted taxes, the information contained in those documents shall be deemed to constitute compliance with this section.

The requirements of this section shall not apply to a deed of trust or other security or regulatory document recorded by or on behalf of a state agency pursuant to a program or activity of the agency authorized by statute or regulation.

SEC. 3. Section 37001 of the Health and Safety Code is amended to read:

37001. The term "low-rent housing project" as defined in Section

1 of Article XXXIV of the California Constitution, does not apply to any development composed of urban or rural dwellings, apartments, or other living accommodations, which meets any one of the following criteria:

(a) (1) The development is privately owned housing, receiving no ad valorem property tax exemption not fully reimbursed to all taxing entities; and (2) not more than 49 percent of the dwellings, apartments, or other living accommodations of such development may be occupied by persons of low income.

(b) The development is privately owned housing, is not exempt from ad valorem taxation by reason of any public ownership, and is not financed with direct long-term financing from a public body.

(c) The development is intended for owner-occupancy, which may include a limited equity housing cooperative as defined in Section 50076.5, or cooperative or condominium ownership, rather than for rental-occupancy.

(d) The development consists of newly constructed, privately owned, one-to-four family dwellings not located on adjoining sites.

(e) The development consists of existing dwelling units leased by the state public body from the private owner of such dwelling units.

(f) The development consists of the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project.

SEC. 4. Any interest in real property acquired by the Department of Housing and Community Development pursuant to, or in furtherance of, a program or activity authorized by Division 31 (commencing with Section 50000) of the Health and Safety Code, during the period from January 1, 1976, to the effective date of the act, is hereby validated as a valid and lawful acquisition by the state, notwithstanding the lack of prior approval pursuant to the Government Code, including, but not limited to, approval by the State Public Works Board, provided that the acquisition was in other respects authorized and proper. Any deed or grant relating to an acquisition that has been recorded during that period shall impart and shall be deemed to have imparted from the date of recordation notice of its contents to subsequent purchasers and encumbrancers.

SEC. 5. Any deed of trust or other security or regulatory document recorded by or on behalf of a state agency pursuant to that agency's authorized programs or activities, which has been accepted for recordation during the period from January 1, 1957, to the effective date of this act, is hereby validated as being a document entitled to recordation provided that the deed or grant was in other respects acceptable for recordation. Any deed or grant that has been so recorded during that period shall impart and shall be deemed to have imparted from the date of recordation notice of its contents to subsequent purchasers and encumbrancers. The Legislature hereby finds and declares that amendment of Section 27281 of the Government Code made by this act does not constitute a change in, but is declaratory of, existing law, and is consistent with

administrative practice.

CHAPTER 1313

An act to amend Section 4726.1 of the Civil Code, to amend Sections 10815, 11350.1, 11475.1, and 11490 of, and to add Section 11492 to, the Welfare and Institutions Code, relating to child support.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 4726.1 of the Civil Code is amended to read:

4726.1. (a) (1) Upon application by a party or district attorney in any proceeding where the court has ordered either or both parents to maintain health insurance under Section 4726, the court shall 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 unless the court makes a finding of good cause for not making the order. The order shall be called a health insurance coverage assignment.

(2) Good cause for not making a health insurance coverage assignment order shall be limited to either of the following:

(A) The court finds that one of the conditions listed in paragraphs (1) to (6), inclusive, of subdivision (e) of Section 4726.1 or paragraphs (1) to (4), inclusive, of subdivision (k) of that section exists.

(B) The court finds that the health insurance coverage assignment would cause extraordinary hardship to the obligor. The court shall specify the nature of the extraordinary hardship, and whenever possible, a date by which the obligor shall obtain health insurance coverage or be subject to 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 order of assignment may be modified at any time by the court.

(c) The application shall state that the party or district attorney 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 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 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 to the district attorney when requested by the district attorney 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 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, consistent with paragraph (2) of subdivision (a) of Section 4726 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, the statement of the obligor's rights, and an employer's return form which shall include the information required in subdivision (o). 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) Upon the request of the district attorney, the employer shall provide the following information to the district attorney within 30 days:

(1) The social security number of the absent parent.

(2) The home address of the absent parent.

(3) Whether the absent parent has a health insurance policy and, if so, the policy names and numbers, and the names of the persons covered.

(4) Whether the health insurance policy provides coverage for dependent children of the absent parent who do not reside in his or her home.

(5) If there is a subsequent lapse in health insurance coverage, the employer shall notify the district attorney, giving the date the coverage ended, the reason for the lapse in coverage and, if the lapse is temporary, the date upon which coverage is expected to resume.

(p) 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. 2. Section 10815 of the Welfare and Institutions Code is amended to read:

10815. (a) The department shall ensure the efficient, effective, and equitable administration of public assistance programs by implementing, in accordance with this chapter, a statewide automated welfare system based upon state-mandated standards for the following public assistance programs: Aid to Families with Dependent Children-unemployed parents, Aid to Families with Dependent Children-family group, Aid to Families with Dependent Children-foster care, food stamps, Medi-Cal eligibility, aid for

adoption of children, special adult programs, and, to the extent feasible, social services programs.

(b) In addition, for the child support enforcement program, the department shall submit an advance automated planning document to the Secretary of the United States Department of Health and Human Services on or before October 1, 1990, which does all of the following:

(1) Meets all of the requirements for a statewide automated system specified in Title IV-D of the federal Social Security Act.

(2) Interfaces with the system or systems developed for public assistance programs.

(3) Operates in all political subdivisions, except Los Angeles County, which county shall develop and implement an automated system which interfaces with the statewide automated system.

(c) (1) The department shall ensure that the Statewide Automated Child Support System (SACSS) is operational in all counties, except Los Angeles County, by October 1, 1995. The system used by Los Angeles County shall interface with the statewide system, and all other counties shall participate in the statewide system.

(2) The requirement for county participation in SACSS shall be incorporated in the Plans of Cooperation with the department, as defined in paragraph (6) of subdivision (f).

(3) The requirement that the Los Angeles ACSES Replacement System (ARS), as defined in paragraphs (1) and (2) of subdivision (f), interface with SACSS shall be incorporated in the Los Angeles Plan of Cooperation with the department.

(d) (1) The department shall continue to work with counties when changes are proposed to SACSS.

(2) To the extent enhanced federal funding is approved for development and implementation of the statewide system, the state shall pay 100 percent of the nonfederal share of costs for those development and implementation costs incurred prior to October 1, 1995. County staff costs approved for enhanced federal financial participation are not subject to this paragraph. The nonfederal share of county facility modification or acquisition shall not be paid by the state.

(3) To the extent the net state share, as defined in paragraph (5) of subdivision (f), of distributed child support collections, as defined in paragraph (3) of subdivision (f), from Los Angeles County exceeds AFDC collection targets established for the county for any year, as set forth in Section 6(c) of the Los Angeles County Three-Year Plan, as defined in paragraph (4) of subdivision (f), the department shall reimburse the county from appropriations made pursuant to Item 5180-101-001 of the Budget Act for the nonfederal share of the development and implementation costs of the Los Angeles County ARS which are eligible for enhanced federal funding, and which have been incurred by Los Angeles County in the same fiscal year in which the collection targets are exceeded.

(4) For any fiscal year in which Los Angeles County receives funds pursuant to paragraph (3), the sanction credit described in Section 11475.2 shall be reduced by the amount which the county received pursuant to paragraph (3). In the event the reduced sanction credit does not fully offset the balance as provided in paragraph (3) of subdivision (f) of Section 11475.2, Los Angeles County shall reimburse the state, to increase the sanction credit in an amount equal to the amount or amounts which the county received in the previous three fiscal years pursuant to paragraph (3) of this subdivision or the amount needed to offset the balance, whichever is less. This paragraph shall become operative only if Assembly Bill 1033 of the 1989–90 Regular Session is enacted.

(e) The counties shall pay the nonfederal share of the ongoing operational and maintenance costs of SACSS which are attributable to local government.

(f) As used in this section, the following definitions shall apply:

(1) "ACSES" means the Los Angeles County Automated Child Support Enforcement System.

(2) "ACSES Replacement System" or "ARS" means the modifications to ACSES that are developed by Los Angeles County pursuant to this section.

(3) "Distributed child support collections" means collections used to reduce or repay aid which is paid pursuant to Chapter 2; collections paid to an aided family; collections paid to a nonaided family regardless of the date of collection; collections paid to other state child support agencies on behalf of children residing in other states; and any other payments collected which qualify for federal child support incentives.

(4) "Los Angeles County Three-Year Plan" means the agreement between the State Department of Social Services and Los Angeles County, dated September 1, 1989, which sets goals and targets for improvement in the Los Angeles County Child Support Enforcement Program.

(5) "Net state share" means 44.6 percent of total AFDC child support collections, less state incentives paid to counties for those collections.

(6) "Plan of cooperation" means an agreement between a county district attorney and the department that specifies the responsibilities and activities to be performed by each party, as described in the department's manual of policies and procedures.

SEC. 3. Section 11350.1 of the Welfare and Institutions Code is amended to read:

11350.1. (a) Notwithstanding any other statute, in any action brought by the district attorney for child support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or caretaker parent. The caretaker parent shall not be a necessary party in the action but may be subpoenaed as a witness. In an action under this section there shall be no joinder of actions, or coordination of actions, or

cross-complaints, and the issues shall be limited strictly to the question of paternity, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or paternity pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties.

(b) In any action to enforce a spousal support order the action may be pled in the name of the county in the same manner as an action to establish a child support obligation. The same restrictions on joinder of actions, coordination of actions, and cross-complaints, and delay because of the pendency of any other action as relates to actions to establish a child support obligation shall also apply to actions to enforce a spousal support order. Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) or otherwise, and litigating the issue of support. In that event, the court in those proceedings shall make an independent determination on the issue of support which shall supersede the support order made pursuant to this section.

SEC. 4. 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, including medical support, 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 (42 U.S.C. Sec. 651 et seq.), 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, which may include medical support or which is for medical support only, 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, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical 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 (42 U.S.C. Sec. 651 et seq.). 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 set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(k) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

SEC. 5. Section 11490 of the Welfare and Institutions Code is amended to read:

11490. (a) The state medical insurance form required in Section 4726 of the Civil Code shall include, but shall not be limited to, all of the following:

(1) The parent or parents' names, addresses, and social security numbers.

(2) The name and address of each parent's place of employment.

(3) The name or names, addresses, policy number or numbers, and coverage type of the medical insurance policy or policies of the parents, if any.

(4) The name, AFDC case number, social security number, and Title IV-E foster care case number or Medi-Cal case numbers of the parents and children covered by the medical insurance policy or policies.

(b) In any action brought or enforcement proceeding instituted by the district attorney under this article for payment of child or spousal support, a completed state medical insurance form shall be obtained and sent by the district attorney to the State Department of Health Services in the manner prescribed by the State Department of Health Services.

Where it has been determined under Section 4726 of the Civil Code that health insurance coverage is not available at no or reasonable cost, the district attorney shall seek a provision in the support order which provides for health insurance coverage should

it become available at no or reasonable cost.

Health insurance coverage shall be considered reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. As used in this section, "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.

(c) (1) The district attorney shall request employers and other groups offering health insurance coverage that is being enforced under this article to notify the district attorney if there has been a lapse in insurance coverage. The district attorney shall be responsible for forwarding information pertaining to the health insurance policy secured for the dependent children for whom the district attorney is enforcing the court ordered medical support to the custodial parent.

(2) The district attorney shall periodically communicate with the State Department of Health Services to determine if there have been lapses in health insurance coverage for public assistance applicants and recipients. The State Department of Health Services shall notify the district attorney when there has been a lapse in court-ordered insurance coverage.

(3) The district attorney shall take appropriate action, civil or criminal, to enforce the obligation to obtain health insurance when there has been a lapse in insurance coverage or failure by the responsible parent to obtain insurance as ordered by the court.

(4) The district attorney shall inform all individuals upon their application for child support enforcement services that medical support enforcement services are available.

If the spouse or child does not receive public assistance or aid and is not a Medi-Cal applicant or recipient, the district attorney shall obtain the applicant's consent prior to providing medical support enforcement services.

SEC. 6. Section 11492 is added to the Welfare and Institutions Code, to read:

11492. (a) A parent who has been served with a medical insurance form shall complete and return the form to the district attorney's office within 20 calendar days of the date the form was served.

(b) The district attorney shall send the completed medical insurance form to the State Department of Health Services in the manner prescribed by 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 1314

An act to amend Sections 703, 1109, 4054, 14810, 14811, 14830, 14831, 17122, 25500, 27036, and 27211 of, to amend the heading of Chapter 4 (commencing with Section 25500) of Division 15 of, to add Sections 14980, 14981, and 14990 to, to add a heading to Division 10.5 (commencing with Section 14500) of, and to add a heading to Chapter 1 (commencing with Section 14500), Chapter 2 (commencing with Section 14600), Chapter 3 (commencing with Section 14700), Chapter 4 (commencing with Section 14800), Chapter 5 (commencing with Section 14900), and Chapter 6 (commencing with Section 14950) of Division 10.5 of, and to repeal Sections 1108 and 23548 of, the Elections Code, relating to elections.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 703 of the Elections Code is amended to read:

703. (a) Cancellation is made by writing or stamping on the affidavit of registration the word "canceled," the reason the affidavit was canceled, and the date of cancellation.

(b) Whenever a voter transfers his or her registration from one precinct to another precinct in the same county, or reregisters in another precinct in the same county as shown by the new affidavit of registration, the county elections official shall immediately cancel the affidavit of registration from the precinct in which the voter was first registered, and shall remove the affidavit from the file of uncanceled affidavits.

(c) Except as provided in Section 315, whenever a voter removes from one county to another county and registers in the latter county, the county elections official of the county in which he or she was first registered, upon being informed of his or her removal either by the voter personally or by receipt of a notice of reregistration under the provisions of Section 313, shall likewise cancel his or her registration and remove the affidavit of registration in that county.

(d) The county elections official in distributing to each precinct the three indexes of registration, as required by this chapter, shall

cross out of those indexes the names of all voters whose affidavits of registration from the precinct have been canceled.

SEC. 2. Section 1108 of the Elections Code is repealed.

SEC. 3. Section 1109 of the Elections Code is amended to read:

1109. The county elections official shall keep open to public inspection a list showing the names and addresses of all persons who have voted as new residents.

SEC. 4. Section 4054 of the Elections Code is amended to read:

4054. After the petition has been filed, as herein provided, the clerk shall examine the petition and certify the results in the same manner as are county petitions in Sections 3707 and 3708 except that, for the purposes of this section, references to the board of supervisors shall be treated as references to the legislative body of the city.

SEC. 5. A heading is added to Division 10.5 (commencing with Section 14500) of the Elections Code, to read:

DIVISION 10.5. RETENTION AND PRESERVATION OF ELECTION RECORDS

SEC. 6. A heading is added to Chapter 1 (commencing with Section 14500) of Division 10.5 of the Elections Code, to read:

CHAPTER 1. AFFIDAVITS OF REGISTRATION AND VOTER REGISTRATION INDEXES

SEC. 7. A heading is added to Chapter 2 (commencing with Section 14600) of Division 10.5 of the Elections Code, to read:

CHAPTER 2. NOMINATION DOCUMENTS

SEC. 8. A heading is added to Chapter 3 (commencing with Section 14700) of Division 10.5 of the Elections Code, to read:

CHAPTER 3. INITIATIVE AND REFERENDUM PETITIONS

SEC. 9. A heading is added to Chapter 4 (commencing with Section 14800) of Division 10.5 of the Elections Code, to read:

CHAPTER 4. PRECINCT SUPPLIES AND BALLOTS

SEC. 10. Section 14810 of the Elections Code is amended to read:

14810. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The packages containing the following ballots and identification envelope shall be kept by the elections official, unopened and unaltered, for 22 months from the date of the election:

(1) Voted polling place ballots.

(2) Voted absent voter ballots.
(3) Absent voter identification envelopes.
(4) Spoiled ballots.
(5) Canceled ballots.
(6) Unused absentee ballots surrendered by the voter pursuant to Section 1012.
(7) Ballot receipts.

(c) If a contest is not commenced within the 22-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots or forgery of absent voters' signatures is not commenced within the 22-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the ballots destroyed or recycled. The packages shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 11. Section 14811 of the Elections Code is amended to read:

14811. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 14810. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The packages containing the following ballots and identification envelopes shall be kept by the elections official, unopened and unaltered, for six months from the date of the election:
(1) Voted polling place ballots.
(2) Voted absent voter ballots.
(3) Absent voter identification envelopes.
(4) Spoiled ballots.
(5) Canceled ballots.
(6) Unused absent voter ballots surrendered by the voter pursuant to Section 1012.
(7) Ballot receipts.

(c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots or forgery of absent voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the packages destroyed or recycled. The packages shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 12. Section 14830 of the Elections Code is amended to read:

14830. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) Upon the completion of the counting of the votes as provided in Article 4 (commencing with Section 17180) of Chapter 13 of Division 12, all ballot cards shall be arranged by precincts and shall

be kept by the elections official for 22 months from the date of the election or so long thereafter as any contest involving the vote at the election remains undetermined.

(c) Notwithstanding any other provision of this code, the final disposition of all voted ballot cards shall be determined by the elections official.

(d) Sealed ballot containers may be opened if the elections official determines it is necessary in a shredding or recycling process. Nothing in this section shall be construed to allow packages or containers to be opened except for purposes specified herein. The packages or containers shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 13. Section 14831 of the Elections Code is amended to read:

14831. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 14830. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) Upon the completion of the counting of the votes as provided in Article 4 (commencing with Section 17180) of Chapter 13 of Division 12, all ballot cards shall be arranged by precincts and shall be kept by the elections official for six months from the date of the election or so long thereafter as any contest involving the vote at the election remains undetermined.

(c) Notwithstanding any other provision of this code, the final disposition of all voted ballot cards shall be determined by the elections official.

(d) Sealed ballot containers may be opened if the elections official determines it is necessary in a shredding or recycling process. Nothing in this section shall be construed to allow packages or containers to be opened except for purposes specified herein. The packages or containers shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 14. A heading is added to Chapter 5 (commencing with Section 14900) of Division 10.5 of the Elections Code, to read:

CHAPTER 5. RECALL PETITIONS

SEC. 15. A heading is added to Chapter 6 (commencing with Section 14950) of Division 10.5 of the Elections Code, to read:

CHAPTER 6. MISCELLANEOUS PROVISIONS

SEC. 16. Section 14980 is added to the Elections Code, to read:

14980. (a) The following provisions apply to those elections where candidates for one or more of the following offices are voted upon: President of the United States, Vice President of the United States, United States Senator, and United States Representative.

(b) The elections official shall preserve all applications for absent

voter ballots for a period of 22 months from the date of the election.

SEC. 17. Section 14981 is added to the Elections Code, to read:

14981. (a) The following provisions apply to all state or local elections not provided for in subdivision (a) of Section 14980. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The elections official shall preserve all applications for absent voter ballots for a period of six months from the date of the election.

SEC. 18. Section 14990 is added to the Elections Code, to read:

14990. The elections official shall preserve the list of new resident voters voting pursuant to Chapter 2 (commencing with Section 1100) of Division 2 for 22 months from the date of the election.

SEC. 19. Section 17122 of the Elections Code is amended to read:

17122. Within 120 days of the filing of the statement of the vote, the Secretary of State, upon the basis of the information provided, shall compile a supplement to the statement of the vote, showing the number of votes cast in each county, city, Assembly district, senatorial district, congressional district and supervisorial district for each candidate for the offices of presidential elector, Governor, and United States Senator, depending on the offices to be filled, and on each statewide ballot proposition. A copy of this supplement shall be made available, upon request, to any elector of this state.

SEC. 20. Section 23548 of the Elections Code is repealed.

SEC. 21. The heading of Chapter 4 (commencing with Section 25500) of Division 15 of the Elections Code is amended to read:

CHAPTER 4. STATE LEGISLATIVE AND STATE OFFICERS

SEC. 22. Section 25500 of the Elections Code is amended to read:

25500. (a) Each candidate for a party nomination for the office of State Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner, at the direct primary election shall file a written and signed declaration of his or her intention to become a candidate for his or her party's nomination for that office. The declaration of intention shall be filed with either the Secretary of State or the clerk of the county in which the candidate is a resident. The declaration of intention shall be filed, on a form to be supplied by the county elections official, not more than 14 nor less than five days prior to the first day on which nomination papers may be presented for filing. However, if the incumbent fails to file a declaration of intention by the end of that period, persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers. The declaration of intention provided for in this section shall be in substantially the following form:

I hereby declare my intention to become a candidate for the _____ Party's nomination
(Name of political party)
for the office of _____
(Name of office and district, if any)
at the direct primary election.

_____
(Signature of candidate)

_____
(Address of candidate)

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for a party nomination for the office of State Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner at the direct primary election unless he or she has filed the declaration of intention provided for in this section. However, if the incumbent of the office files a declaration of intention, but for any reason fails to qualify for nomination for the office by the last day prescribed for the filing of nomination papers, an additional five days shall be allowed for the filing of nomination papers for the office, and any person, other than the incumbent if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in subdivision (a).

SEC. 23. Section 27036 of the Elections Code is amended to read:

27036. Each section of the petition shall have attached to it a declaration signed by the circulator of that section of the petition, setting forth all of the following:

(a) The printed name of the circulator.

(b) The residence address of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained.

(c) That the circulator circulated that section and saw the appended signatures being written.

(d) That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.

(e) That the circulator is a registered voter of the electoral jurisdiction of the officer sought to be recalled.

(f) The dates between which all the signatures to the petition section were obtained.

(g) The circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury, with the signature of his or her name at length, including given name, middle name or initial, or initial and middle name. The circulator shall state the date and the place of execution on the declaration immediately

following the circulator's signature.

SEC. 24. Section 27211 of the Elections Code is amended to read:

27211. The number of qualified signatures required in order to qualify a recall for the ballot shall be as follows:

(a) In the case of an officer of a city, county, school district, community college district, county board of education, or resident voting district, the number of signatures shall be equal in number to not less than the following percent of the registered voters in the electoral jurisdiction:

(1) Thirty percent if the registration is less than 1,000.

(2) Twenty-five percent if the registration is less than 10,000 but at least 1,000.

(3) Twenty percent if the registration is less than 50,000 but at least 10,000.

(4) Fifteen percent if the registration is less than 100,000 but at least 50,000.

(5) Ten percent if the registration is 100,000 or above.

The number of registered voters shall be calculated as of the time of the last report of registration by the county clerk to the Secretary of State pursuant to Section 607, and prior to the finding by the clerk or Secretary of State that no alterations are required in the form of the recall petition pursuant to Section 27031.5

(b) In the case of a state officer, including judges of courts of appeal and trial courts, the number of signatures shall be as provided for in subdivision (b) of Section 14 of Article II of the California Constitution. In the case of a judge of a superior, municipal, or justice court, which office has never appeared on the ballot since its creation, or did not appear on the ballot at its last election pursuant to Section 25304, the number of signatures shall be as provided in subdivision (b) of Section 14 of Article II of the California Constitution except that the percent shall be based on the number of votes cast within the judicial jurisdiction for the countywide office which had the least number of votes in the most recent general election in the county in which the judge holds his or her office.

For purposes of this subdivision, "countywide office" means an elective office wholly within the county which is voted on throughout the county.

(c) In the case of a landowner voting district, signatures of voters owning at least 10 percent of the assessed value of land within the electoral jurisdiction of the officer sought to be recalled.

SEC. 25. 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 1315

An act to amend Section 1785.16 of the Civil Code, relating to credit reporting.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 1785.16 of the Civil Code is amended to read:

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time reinvestigate and record the current status of the disputed information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer in writing within five days after that determination is made that it will not reinvestigate the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be missing, inaccurate, or can no longer be verified, the consumer credit reporting agency shall promptly add, correct, or delete that information from the consumer's file and shall notify the consumer that the information has been added, corrected, or deleted.

The notification to the consumer shall include a copy of the corrected consumer credit report. The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer credit reporting agency may limit these statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of dispute is filed, the consumer credit reporting agency shall, in any subsequent consumer credit report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate

summary thereof.

(d) Following the deletion of information from a consumer's file pursuant to subdivision (a), or following the filing of a dispute pursuant to subdivision (b), the consumer credit reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (b). This notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for any other purpose, if these consumer credit reports contained the deleted or disputed information. The consumer credit reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification. The disclosure shall be made at or prior to the time the information is deleted pursuant to subdivision (a) or the consumer's statement regarding the disputed information is received pursuant to subdivision (b).

CHAPTER 1316

An act to amend Sections 19625, 19626, 19627, 19629, 19630, 19631, 19632, 19636, 19637, 19638, 19639, 19640, 19641, 19651, and 19652 of, and to add Sections 19625.5, 19626.5, and 19640.5 to, the Welfare and Institutions Code, relating to services for the blind

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 19625 of the Welfare and Institutions Code is amended to read:

19625. For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under this article shall be authorized to operate vending facilities on any property within this state as provided in this article. In order to administer this article, the director shall establish and promote the Business Enterprises Program for the Blind.

It is the intent of the Legislature that the Randolph-Sheppard Act (20 U.S.C. Sec. 107 et. seq.), and the federal regulations for its administration set forth in Part 395 (commencing with Section 395.1) of Title 34 of the Code of Federal Regulations, shall serve as

minimum standards for the operation of the Business Enterprises Program for the Blind.

(a) With respect to vending facilities on state property, priority shall be given to blind persons, including the assignment of vending machine income as provided in this article. As used in this article, "state property" means all real property, or part thereof, owned, leased, rented, or otherwise controlled or occupied by any department or other agency or body of this state.

(b) With respect to vending on federal property within this state, priority shall be given as provided in the federal Randolph-Sheppard Act (20 U.S.C. Sec. 107 et seq.), including the amendments thereto. This article, as it applies to federal property, is intended to conform to that act and is to be of no force or effect if, and to the extent that, any provision of this article or any regulation adopted under this article is in conflict with that act. Nothing in this subdivision shall be construed to impose limitations on the operation of vending facilities on state property, or property other than federal property, or to allow only those activities specifically enumerated in the Randolph-Sheppard Act.

(c) On all other property within this state, whether owned or controlled privately or by any county, city, city and county, or other political subdivision, the department shall take all feasible steps to encourage and establish vending by blind persons licensed under this article. The department may enter into appropriate agreements with the entities or persons owning or controlling the other property. All these agreements shall be in writing and shall be in conformity with this article.

(d) The director shall actively pursue all commissions from vending facilities not operated by blind vendors as provided for in paragraph (2) of subdivision (a) of Section 19630, and shall seek new placements of vending facilities on state property where a facility is not yet in place.

SEC. 1.5. Section 19625.5 is added to the Welfare and Institutions Code, to read:

19625.5. The department shall support and encourage all participants in the Business Enterprises Program to be as successful at becoming self-supporting as possible.

SEC. 2. Section 19626 of the Welfare and Institutions Code is amended to read:

19626. A "vending facility" is a location which may sell, at wholesale or retail, foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with applicable health laws.

A "vending facility" may consist, exclusively or in appropriate combination, of automatic vending machines, cafeterias, snackbars, catering or food concession vehicles, cart service, shelters, counters and any appropriate equipment as the director may by regulation prescribe as being necessary for the sale of the articles or services

described in the first paragraph of this section.

A "vending facility" may encompass more than one building.

Licensed blind vendors shall not be required to purchase supplies or services from wholesalers who may be licensed under this article.

SEC. 3. Section 19626.5 is added to the Welfare and Institutions Code, to read:

19626.5. (a) The department shall develop and promulgate regulations regarding life standards for vending facility equipment. These regulations shall include, but not be limited to, life expectancy of equipment, time periods within which equipment shall be replaced, and exceptions to the requirement of replacement of equipment within the specified time periods, including when there is a history of no service problems. These regulations shall also provide for exceptions to the life standard or life expectancy policies allowing earlier replacement under certain circumstances including excessive mechanical failures or other malfunction that is not the fault of the operator.

(b) The department, in administering the Business Enterprises Program, shall consult with the Department of General Services and develop a system of expediting equipment orders to ensure timely delivery, thereby reducing financial hardship to vendors and allowing provision of continuous food service as required by the contracting agency. This system shall not preclude the Department of General Services from exercising oversight and review of the purchasing process.

SEC. 4. Section 19627 of the Welfare and Institutions Code is amended to read:

19627. (a) In order to implement the priority declared in subdivision (a) of Section 19625, the director shall, in consultation with the committee of licensed blind vendors, and after consultation with and agreement by the Director of General Services and other heads of departments or agencies in control of the maintenance, operation, and protection of state property, develop regulations designed to ensure the following:

(1) That priority is given to blind persons licensed under this article, including the assignment of vending machine income as provided in this article.

(2) That one or more vending facilities shall be established on all state property to the extent that any facility or facilities is feasible. Where a larger vending facility is not feasible, the director shall take steps to place vending machines whenever possible. In determining feasibility the director shall consider, but is not limited to consideration of, all of the following:

(A) The number of state employees in the building or on the state property.

(B) The size, in square feet, of the area leased, occupied, owned, or otherwise controlled by the state.

(C) The length of time the property will be leased or occupied by the state.

(D) Whether establishment of a vending facility would adversely affect the interests of the state.

(E) The likelihood the vending facility will produce sufficient net income for a blind vendor as provided in Section 19631.

(b) Any decision that the placement or operation of a vending facility is not feasible, or that placement or operation would adversely affect the interests of the state shall be in writing, and shall be made available to the committee of licensed blind vendors.

(c) The Director of General Services is authorized to construct and install or permit the construction and installation of a vending facility on any property owned or occupied by the state. In the case of leased space, costs shall be shared by agencies occupying the space as determined by the Director of General Services.

(d) The director is authorized, subject to regulations developed pursuant to subdivision (a) and the requirements of the federal Randolph-Sheppard Act, to select a location for a facility and the type of facility to be provided.

(e) Immediately upon receipt of notification from any state department or agency, the Department of General Services, Office of Real Estate and Design Services shall provide written notice to the director of the plans of any state department or agency to occupy, acquire, renovate, or relocate a property. This notice shall permit the director to determine in accordance with regulations developed pursuant to subdivision (a) whether the property includes, or will include, a satisfactory site or sites for a vending facility.

(f) After January 1, 1978, no department or agency of the state shall undertake to acquire by ownership, rent or lease, or to otherwise occupy, in whole or in part, any property unless, after consultation with the head of that department or agency, it is determined by the director in accordance with regulations developed pursuant to subdivision (a) either (1) that the property includes a satisfactory site or sites for the location and operation of a vending facility by a blind person; or (2) that, if a building is to be constructed, substantially altered or renovated, or, in the case of a building that is already occupied on that date by the department or agency, is to be substantially altered or renovated for use by the department or agency, the design for the construction, substantial alteration or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind person.

(g) The provisions of subdivision (f) shall not apply when the director, in consultation with the committee of blind vendors, determines that the number of people using the property is or will be insufficient to support a vending facility.

(h) For the purpose of this section, the term "satisfactory site" means an area determined by the director to have sufficient space, electrical and plumbing outlets, and any other facilities as the director shall by regulation prescribe, for the location and operation of a vending facility by a blind person.

(i) If the director determines that any agency or department of

the state fails to comply with this section, the director shall establish a panel to arbitrate the dispute and the decision of the panel shall be final and binding on all parties.

(j) The arbitration panel convened by the director shall be composed of three members, appointed as follows:

(1) One individual by the director.

(2) One individual by the agency or department having care, custody or control of the premises.

(3) One individual who shall serve as chairman, jointly designated by the members appointed under paragraph (1) and paragraph (2). If either party fails to agree on an individual, the director shall designate a hearing officer from the Office of Administrative Hearings who shall preside.

(k) This section shall not apply to existing employee-operated, nonprofit organizations operating vending facilities that include manual cafeteria operations on state property.

This section shall not be construed to require that employee-operated, nonprofit organizations shall discontinue operating vending facilities that include manual cafeteria operations on state property as of January 1, 1978.

SEC. 5. Section 19629 of the Welfare and Institutions Code is amended to read:

19629. (a) The department shall provide that, if any funds are set aside, or caused to be set aside, from the net proceeds of the operation of the vending facilities those funds shall be set aside, only to the extent necessary, but not to exceed the amount equal to 6 percent of gross sales, and may be used only for the following purposes:

(1) Maintenance and replacement of equipment.

(2) The purchase of new equipment.

(3) The construction of new vending facilities.

(4) Loans to vendors for initial stock.

(5) Funding the functions of the committee of blind vendors established by Section 19638.

(6) Retirement or pension funds, health insurance contributions or premiums, life insurance contributions or premiums to the extent approved by the federal Rehabilitation Services Administration, and provision for paid sick leave or vacation time or business-related insurance, if it is so determined by a majority vote of blind vendors after the department provides to each vendor full information on all matters relevant to these purposes. The department shall seek the necessary approval for expenditures of set-aside funds for life insurance contributions or premiums.

(b) No set-aside funds shall be collected where the monthly net proceeds are less than one thousand dollars ($1,000). This amount shall be annually adjusted by the department to reflect changes in the cost of living. The average of the separate indices of cost of living for Los Angeles and San Francisco, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining

the change in the cost of living.

(c) Set-aside funds collected from the operation of all vending facilities administered by the Business Enterprise Program shall be placed in a single special deposit fund.

(d) As used in this section, "net proceeds" shall be the sum of the amount remaining from the sale of articles or services and the amount of any vending machine or other income accruing to blind vendors after the cost of sale and other expenses (excluding set-aside charges required to be paid by the blind vendors) have been deducted.

(e) It is the intent of the Legislature that the expenditure of the service charges authorized by this section shall be supplemental to any current appropriations available for these purposes and shall not constitute an offset or diminution of any appropriations.

(f) An amount equal to 10 percent of the wages paid by a vendor to any blind person, as defined in Section 19153, or to any disabled person, as defined in regulations issued by the department, shall be deducted from any service charge paid by the vendor, in order to encourage vendors to employ more blind and disabled workers and thereby set an example for industry and government. There shall be no deduction from any service charge paid by a vendor if the vendor does not pay wages at least equal to the minimum wages required of employers pursuant to Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

SEC. 6. Section 19630 of the Welfare and Institutions Code is amended to read:

19630. (a) After July 1, 1978, all vending machine income from vending machines on state property shall accrue to (1) the blind vendor operating a vending facility on the property, or (2) in the event there is no blind vendor operating a facility on the property, to the Department of Rehabilitation Vending Machine Trust Fund for only those uses designated in subdivision (d).

(b) The department may, notwithstanding subdivision (d), distribute vending machine income accruing under paragraph (2) of subdivision (a) to a blind vendor of a facility not meeting the standard specified in Section 19631 on January 1, 1978, provided that the distribution was being made on January 1, 1977, and provided that the distribution shall not be in greater amount than was being made on January 1, 1977.

(c) The director shall ensure compliance with this section with respect to buildings, installations, facilities, and roadside rest stops, and shall be responsible for collection of, and accounting for, vending machine income.

Any limitation on the placement or operation of a vending machine based on a finding by a state department or agency that the placement or operation would adversely affect the interests of the state shall be fully justified in writing to the director. The director shall determine whether the limitation is justified, and if dissatisfied with the justification, may submit the matter for arbitration to the

panel established by Section 19627.

(d) All vending machine income which accrues to the department shall be used to establish retirement or pension plans, to provide health and life insurance contributions, paid sick leave, vacation time, or professional services needed by the committee of licensed blind vendors, subject to a vote of blind vendors as provided under paragraph (6) of subdivision (a) of Section 19629. Use of funds for provision of life insurance shall also be subject to the approval of the federal Rehabilitation Services Administration as required under paragraph (6) of subdivision (a) of Section 19629.

(e) "Vending machine income" means receipts, other than those of a blind vendor, from vending machine operations on state property, after cost of goods sold at competitive prices, including reasonable service and maintenance costs, where the machines are operated, serviced, or maintained by, or with the approval of, a department or other agency of the state, or commissions paid, other than to a blind vendor, by a commercial vending concern which operates, services, and maintains vending machines on state property.

(f) Vending machine income from vending machines on property referred to in subdivision (c) of Section 19625 shall, pursuant to agreement as there provided, accrue to (1) the blind vendor operating a vending facility on that property, or (2) in the event there is no blind vendor operating a facility on the property, to the department for the uses designated in subdivision (d) of this section.

(g) (1) The amount of vending machine income accruing from vending machines on state property which may be used to contract for professional services, as provided in subdivision (d), shall be determined upon a vote of approval of three-fourths of the committee of licensed blind vendors. Under no circumstances shall the amount approved for professional services exceed 10 percent of the annual gross vendor machine income, as determined by the previous year's income.

(2) The committee of licensed blind vendors may contract for the provision of professional services without the express approval of the Department of General Services.

(h) Vending machine income accruing to the department from vending machines on federal property may be used for professional services pursuant to subdivisions (d) and (g) subject to the approval of the federal Rehabilitation Services Administration. If approved, the amount approved by the committee of licensed blind vendors in any fiscal year shall not exceed the annual gross income obtained from vending machines on state and federal property. The provisions of this section shall not apply to vending machine income from vending machines operated by existing, incorporated, employee-operated, nonprofit organizations that were incorporated prior to January 1, 1977. This subdivision shall not preclude preexisting or future arrangements for these organizations to share vending machine income with blind vendors.

SEC. 7. Section 19631 of the Welfare and Institutions Code is amended to read:

19631. The department shall not cause or permit the establishment or placement of any blind vendor in a vending facility unless the director, in consultation with the committee of licensed blind vendors, first determines that the facility produces, or is likely to produce within a reasonable time, an adequate net income for a blind vendor.

Nothing in this article prohibits the entity or person controlling property on which a vending facility is located from making, to the blind vendor operating it, payments in supplementation of proceeds realized from sales.

SEC. 8. Section 19632 of the Welfare and Institutions Code is amended to read:

19632. (a) Licenses shall be issued only to applicants who are blind within the meaning of Section 19153 and who are qualified to operate vending facilities. The continuing eligibility of a vendor as a blind person shall be reviewed biennially for partially sighted individuals and whenever the department has reason to believe a vendor's status as a blind person no longer fits the definition set forth in Section 19153.

(b) The director, in consultation with the committee of licensed blind vendors and the Program Manager of the Services for the Blind, shall adopt and publish regulations providing for all of the following:

(1) The requirements for licensure as a blind vendor.

(2) A curriculum for training and inservice training of blind vendors.

(3) A regular schedule for offering the training and inservice training classes. The classes shall be offered at least once per year, in at least two locations throughout the state.

(c) The person, governing board, or legislative body having the care, custody, and control of the building in which a vending facility is operated pursuant to this article, has the power to approve, disapprove, or withdraw approval of the person operating a vending facility, but only for good cause. Good cause shall be determined only after the person, governing board, or legislative body having control of the vending facility has notified the department in writing of the grounds for removal and has supplied any supporting material. All of the following shall apply to any disapproval or withdrawal of approval:

(1) Upon receipt of a written notification, the department shall issue a letter of reprimand to the vendor which shall include a copy of the original notification and any supporting material. The letter of reprimand shall also state the date of removal and the vendor's right to appeal the decision of the director to remove, suspend, or terminate the vendor from participation in the Business Enterprises Program. The letter of reprimand shall be sent by certified mail with a receipt confirmation required.

(2) Upon receipt of the letter of reprimand, the vendor shall have 15 regular working days to remedy the reasons for the complaint stated in the written notification. If the condition has not been rectified to the satisfaction of the person, governing board, or legislative body having control of the vending facility, that party shall notify the director, and the vendor shall be informed by the director and shall immediately vacate the premises.

(3) The department shall make all reasonable efforts, as appropriate, to assist the vendor in rectifying the condition or reason for the complaint stated in the written notification to the department during the 15-day probation period.

(4) The department may not orally, in writing, or by any other form of communication, instigate, initiate, or encourage a person, governing board, or legislative body having the control of the property in which a vending facility is operated to request the removal of a licensee.

(d) Each license shall be issued for an indefinite period. A license may be terminated by the department for good cause but only after providing the licensee an opportunity for a full and fair hearing in accordance with the provisions of this article. The removal of a licensee upon the request of the person, governing board, or legislative body having the care, custody and control of the property in which a vending facility is operated shall not require a finding of ineligibility for licensing.

SEC. 9. Section 19636 of the Welfare and Institutions Code is amended to read:

19636. The director shall assign adequate personnel to carry out duties related to the administration of this article. In selecting personnel to fill any position under this section, the director shall comply with the discrimination prohibition of subdivision (a) of Section 12940 of the Government Code. The director shall review staffing annually. The committee of licensed blind vendors shall be allowed to provide input regarding the adequacy of the staffing levels for the Business Enterprises Program prior to the director's annual review.

SEC. 10. Section 19637 of the Welfare and Institutions Code is amended to read:

19637. The director shall provide to each blind vendor access to all relevant financial data, including quarterly and annual financial reports on the operation of the state vending facility program and access to his or her performance rating or other personal data maintained by the department in regard to him or her.

A copy of all completed audits, reports, and investigations which affect the Business Enterprises Program for the Blind shall be sent to the committee of licensed blind vendors.

SEC. 11. Section 19638 of the Welfare and Institutions Code is amended to read:

19638. (a) The director shall conduct a biennial election by secret ballot of a committee of licensed blind vendors who shall be

fully representative of all blind licensees in the state program. Representation shall be no less than one committee member for every 25 licensed vendors. At the discretion of the committee, major issues may be referred to a subcommittee of blind vendors, or to all the blind vendors in order to ascertain their views. Only licensed blind persons operating a facility shall serve on the committee or subcommittees, or vote in any poll or election authorized under this article. The members and subcommittee members shall be reimbursed for their actual and necessary expenses in participating in committee functions.

(b) The director shall ensure that the participation of the committee of blind vendors is, at a minimum, equal to that required by Section 107b-1 of Title 20 of the United States Code. The responsibilities and actions of the committee of blind vendors shall include, but not be limited to:

(1) Participation, with the department, in major administrative decisions and policy and program development. Any implementation of changes in administrative policy or program development that is within the discretion of the department shall occur only after review by this committee of licensed blind vendors.

(2) Receiving grievances of blind vendors and serving as advocates for the vendors.

(3) Participation, with the department, in the development and administration of a transfer and promotion system for blind vendors.

(4) Participation, with the department, in developing training and retraining programs.

(5) Sponsorship, with the assistance of the department, of meetings and instructional conferences for blind vendors.

(c) The committee of licensed blind vendors may contract for professional services, including, but not limited to, legal counsel. Payment for professional services rendered to the committee of licensed blind vendors shall be made from state vending machine income pursuant to subdivisions (d) and (e) of Section 19630.

SEC. 12. Section 19639 of the Welfare and Institutions Code is amended to read:

19639. (a) The director shall adopt and promulgate necessary rules and regulations, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and do all things necessary and proper to carry out this article. The director shall review these regulations for possible revision at least every three years.

(b) These regulations shall include, but not be limited to:

(1) Uniform procedures for vendor application and termination.

(2) Criteria and standards for selecting vendors and matching vendors to facilities which shall ensure that the most qualified person is selected for a facility.

(3) Equipment life standards and service standards for the inventory, repair, and purchase of equipment, as required under subdivision (a) of Section 19626.5.

(4) The minimum requirements for installation of a facility.

(5) A fair minimum of return to vendors.

(6) Standards for training, in-service retraining, and upward mobility.

(7) The policies and procedures used by the department for collection and deposit or disbursement of all vending facility income, including, but not limited to, the frequency, rules regarding, and method of collection of funds from facilities operated by licensed blind vendors and facilities operated by other individuals or entities.

(c) The director shall provide a written copy of all rules and regulations adopted pursuant to this section to all vendors. Upon request by a vendor, the rules and regulations shall be supplied to the vendor on cassette tapes in lieu of the written copy. In addition, the director shall notify all vendors of any proposed changes to the rules and regulations.

SEC. 13. Section 19640 of the Welfare and Institutions Code is amended to read:

19640. (a) The department shall prepare and submit a report to the committee of licensed blind vendors and to any appropriate governmental agencies pursuant to Sections 20000 to 20050, inclusive, of the State Administrative Manual, on or before January 1, 1992, which shall include all of the following:

(1) A list of all state property (as defined in Section 19625 of the Welfare and Institutions Code) and federal buildings or property, which already does or which could accommodate a vending facility as provided for in this article, or the federal Randolph-Sheppard Act (20 U.S.C. Sec. 107 et seq.).

(2) For those buildings or locations which have a vending facility in place, an indication of which facilities are operated by licensed blind vendors as part of the Business Enterprises Program for the Blind, and which are operated by private entities.

(3) For those vending facilities operated by a private entity, an indication of those from which commissions for the Business Enterprises Program for the Blind have been collected.

(4) For those buildings or locations which do not have vending facilities in place, an indication of those in which a vending facility would appropriately be placed, or the reasons, as provided in paragraph (2) of subdivision (a) of Section 19627, why a vending facility is not feasible in that building or location.

(b) The director shall obtain all available information from the Department of General Services to conduct a survey, in every odd-numbered year on or before June 30 of each odd-numbered year commencing with 1991, for incorporation into the report required under subdivision (a). The survey shall include, but not be limited to, all of the following:

(1) The number and identity of state buildings.

(2) The number and identity of those state buildings which have vending facilities or machines.

(3) The number of employees located in each building, rather

than in the field, during working hours.

(4) The square footage of the building.

(5) Other appropriate information requested by the department.

(c) In preparing the report required by subdivision (a) and each of the updates required under subdivision (d), all departments and agencies which have vending machines or facilities shall cooperate with the department by providing information from the entities having care, custody, and control of any vending machines or facility, including, but not limited to, the terms of contracts for vending including fiscal terms, and the disbursement practices for vending machine income. The department shall incorporate this information into the report.

(d) The report prepared by the department pursuant to this section shall be updated on or before January 1 of every even-numbered year, and this biennial update shall also be submitted to the committee of licensed blind vendors and the Legislature.

(e) The reports and updates required by this section shall be used by the department and the committee to develop greater opportunities for placement of blind vendors and vending machines and facilities on state property.

SEC. 13.5. Section 19640.5 is added to the Welfare and Institutions Code, to read:

19640.5. The Auditor General shall conduct a fiscal audit every third fiscal year, and a programmatic review and audit every five years, both commencing with the 1991–92 fiscal year.

SEC. 14. Section 19641 of the Welfare and Institutions Code is amended to read:

19641. The surviving spouse of a blind vendor operating a facility pursuant to this article shall have the right after the death of the blind vendor to operate the facility operated by the blind vendor immediately prior to his or her death if the spouse meets all of the following conditions:

(a) The spouse is blind as that term is defined for purposes of this article.

(b) The spouse has been certified as qualified to operate a vending facility prior to the death of the blind vendor, even if the spouse is not currently certified as qualified to operate a vending facility.

(c) The spouse, within a period of one year after the death of the blind vendor, becomes certified as qualified to operate a vending facility by passing a certification examination with a score of at least 70 percent.

(d) The spouse has assisted the blind vendor in the operation of the vending facility.

A license shall be issued to a surviving spouse who meets the requirements in subdivisions (a) through (d). If the spouse needs to be recertified as qualified to operate a vending facility, the spouse shall have undergone at least a two-month supervised on-the-job

training experience at the facility which the blind vendor operated.

A spouse seeking to operate a vending facility pursuant to this section shall be permitted to operate the facility during the one-year period after the death of the blind vendor operating the facility without regard to the status of the spouse's certification, and the spouse shall be eligible during the one-year period after the death of the blind vendor for any training provided by the department, or any agency designated by the department, to persons seeking to become certified as qualified to operate a vending facility.

This section shall apply to vending facilities where the death of the blind vendor operating the facility occurs on or after January 1, 1981.

SEC. 15. Section 19651 of the Welfare and Institutions Code is amended to read:

19651. From commissions collected in those facilities in which there are no blind vending stand operators licensed by the Department of Rehabilitation, the Department of Rehabilitation, upon a finding by the department that the vendors' retirement program is actuarially sound and fiscally solvent, shall contribute to an annuity plan for blind vending stand operators licensed by the Department of Rehabilitation pursuant to Section 19630 of this chapter or pursuant to Section 107a of Title 20 of the United States Code.

SEC. 16. Section 19652 of the Welfare and Institutions Code is amended to read:

19652. (a) The Department of Rehabilitation shall:

(1) Cooperate with or arrange through private carriers for the administration of an annuity plan pursuant to Sections 19650 and 19651.

(2) In accomplishing the provisions of this subdivision the department shall establish and consult with the committee of licensed blind vendors.

(b) The blind vending operators shall be deemed a group within the definition of Section 10200.5 of the Insurance Code who may be enrolled in a franchise or wholesale life insurance plan.

CHAPTER 1317

An act to add Section 2889 to the Public Utilities Code, relating to telephones.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. (a) The Legislature finds and declares that certain information providers, primarily using 976 telephone numbers, providing live or recorded messages through the use of information

access telephone service corporations, are misleading consumers with regard to the information available through their services and failing to clearly indicate that there will be a charge for the transmission of that information. Consumers have complained that they are being misled by those information providers because they are being charged for information different than was advertised. Most significantly, this problem has arisen primarily among information providers engaged in furnishing prospective tenants with rental information on residential real properties, or in furnishing jobseekers with information on employment opportunities.

(b) It is, therefore, the intent of the Legislature, in enacting Section 2889 of the Public Utilities Code, to ensure that users of information access telephone services are protected from these deceptive practices by requiring information providers to provide a disclosure message of specified information at the beginning of each call and to allow the consumer to discontinue the call at the completion of the message without charge.

SEC. 2. Section 2889 is added to the Public Utilities Code, to read:

2889. (a) An information provider engaged in furnishing any live, recorded, or recorded-interactive audio text through information access telephone service shall provide a (1) delayed timing of information charges and (2) price disclosure message.

(b) The telephone corporation shall provide information providers, described in subdivision (a), with a period of a minimum of 12 seconds for a delayed timing of information charges and price disclosure message. If the delayed timing period is exceeded, a consumer shall be billed from the time of the initial connection, and transport charges shall be billed to the information provider from the time of the initial connection. If the consumer disconnects the call within the delayed timing period, no information charge shall be billed to the caller.

(c) (1) During the delayed timing period, the information provider shall inform the consumer of all of the following:

(A) The name of the programs.

(B) The information charge for the call.

(C) The date the information was recorded, if the information is a recorded message.

(D) That if the caller disconnects the call within the delayed timing period, the consumer will not be charged for the call.

(2) This information shall be provided at the beginning of every call and at least three seconds shall be allowed at the end of the message within the delayed timing period for the consumer to hang up without being charged if he or she has not already disconnected the call. The information provider shall provide a tone to indicate the end of the delayed timing period.

(d) This section does not apply to audiotex programs with restricted access via personal identification number (PIN) code or special password.

(e) As used in this section, "delayed timing of information charges" means a service feature which delays commencement of billing of charges for a minimum of 12 seconds in order to provide the information required by subdivision (c).

(f) Every violation of this section is a misdemeanor.

SEC. 3. This act shall become operative on July 1, 1991.

CHAPTER 1318

An act to add Section 830.1 to the Government Code, relating to improvements.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 830.1 is added to the Government Code, to read:

830.1. For purposes of this chapter, seismic safety improvements or fire sprinkler improvements which are owned, built, controlled, operated, and maintained by the private owner of the building in which they are installed are not public property or property of a public entity solely because the improvements were financed, in whole or in part, by means of the formation of a special assessment district.

CHAPTER 1319

An act to add Sections 22823, 22862.1, and 22862.2 to the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

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

SECTION 1. Section 22823 is added to the Government Code, to read:

22823. No person shall be eligible to be enrolled in a health benefits plan pursuant to this part as a family member if he or she becomes a family member of an eligible person who is either (a) a surviving spouse of a deceased member of the Public Employees' Retirement System or (b) a recipient, as a surviving spouse of a deceased retired member of the Public Employees' Retirement System, of a retirement allowance pursuant to Section 21333, 21334,

or 21335.

SEC. 2. Section 22862.1 is added to the Government Code, to read:

22862.1. Notwithstanding any other provision of law, the board may contract with health maintenance organizations or fee-for-service plans, licensed and doing business in other states to provide health benefits for active state employees assigned to perform duties outside of this state and for retired employees who choose to reside out of this state. The contracts shall be on such terms as the board in its discretion deems necessary or desirable. The plans may not be required to meet the minimum requirements of the board, as specified in the regulations of the board, but shall, at a minimum, provide appropriate safeguards for members. For purposes of this section, an employee is permanently assigned out-of-state if the assignment is intended to exceed four months.

SEC. 3. Section 22862.2 is added to the Government Code, to read:

22862.2. An out-of-state employee who separates from service as an employee of this state and becomes an annuitant, as defined by Section 22754, may continue his or her enrollment in a board-approved out-of-state health benefits plan or may transfer to any other plan approved or maintained by the board.

An annuitant who leaves this state and elects to reside in another state in which the board maintains a health benefits plan which is approved by the board may transfer his or her enrollment to that plan and shall be entitled to the benefits of the employer's contributions as provided in this part.

SEC. 4. 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. 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 needed health benefits plan coverage for out-of-state employees may be provided and that the administrative interpretation of the ineligibility of certain new family members of surviving spouses of deceased members may be codified, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1320

An act to add Section 13823.20 to the Penal Code, relating to law enforcement, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

I am deleting the $4,000,000 appropriation contained in Section 3 of Assembly Bill No 4087

This bill would appropriate $4 million in federal Anti-Drug Abuse funds from the Office of Criminal Justice Planning to Los Angeles and at least three other cities to establish a police foot patrol demonstration project

This appropriation is unnecessary as Provision 3 of Item No 8100-101-890 of the 1990 Budget Act authorizes funding subject to the procedure set forth if additional federal monies becomes available

With this deletion, I approve Assembly Bill No 4087

GEORGE DEUKMEJIAN, Governor

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

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

(a) The drug abuse epidemic in California has precipitated increased street drug trafficking and gang violence, creating pockets of entrenched violent crimes in portions of California cities.

(b) Deployment of additional officers in these areas reduces crime and has received strong support from residents and businesses.

(c) Foot patrols long have been considered a vital element in the overall plan to curb crimes.

(d) The Los Angeles Police Department instituted a pilot foot patrol program in specified areas of the city in September 1989. Funding for the program was redirected from a separate account for a limited time only.

(e) The program has demonstrated dramatic success in reducing crime. Statistics collected by the Los Angeles Police Department indicate that the number of murders in the targeted districts dropped from 27 to 3 in comparable three-month periods. Robbery and burglary decreased by 5 percent and violent crimes decreased by 11 percent. By contrast, crime in Los Angeles as a whole remained relatively constant during this same period.

(f) The Los Angeles program is in jeopardy due to the lack of continuation funding in the current budget and the city's inability to appropriate additional funds in the new fiscal year.

(g) Other California cities, especially San Diego and San Jose, are experiencing increased crime due to drug trafficking. Foot patrols in targeted areas of these cities should cause crime reductions similar to those experienced in the Los Angeles program.

SEC. 2. Section 13823.20 is added to the Penal Code, to read:

13823.20. (a) The Office of Criminal Justice Planning shall establish a demonstration project in the City of Los Angeles for the

purpose of creating police foot patrols in high intensity drug-related crime areas. Funds for these demonstration projects shall be allocated to the City of Los Angeles no later than 30 days following enactment of this section.

(b) The office also shall issue a request for proposal to select at least three additional cities for police foot patrol demonstration projects. Funds for this request for proposal shall be awarded no later than 90 days following enactment of this section.

(c) The police department in each city shall identify targeted areas for foot patrols based on high incidence of crime related to drug trafficking and other drug crimes. At a minimum, the Los Angeles Police Department shall target areas in south Los Angeles, central Los Angeles, east Los Angeles, and the San Fernando Valley.

(d) The Office of Criminal Justice Planning shall conduct an evaluation of the foot patrol programs created by this section and shall submit a report to the Legislature no later than August 31, 1991.

(e) The evaluation shall examine the effectiveness of the program relative to the following objectives:

(1) Each city shall demonstrate empirically that areas targeted for foot patrols have a high incidence of drug-related crimes.

(2) Officers are deployed to the targeted areas at least 20 percent of the time of each week.

(3) Against a baseline period established by the city police department, the following reductions occur in the aggregate for the targeted areas during the pilot period:

(A) An 8 percent reduction in radio calls.

(B) A 6 percent reduction in repressible crime.

(C) A 12 percent reduction in violent crime.

(4) Each city shall demonstrate whether changes in the incidence of drug-related crimes in areas adjacent to the targeted areas are appreciable and the extent to which those changes may be caused by increased foot patrol activity in the targeted areas.

SEC. 3. Pursuant to subdivision (a) of Provision 3 of Item 8100-101-890 of Section 2.00 of the Budget Act of 1990, the sum of four million dollars ($4,000,000) is hereby appropriated from funds from the federal Anti-Drug Abuse Act of 1988 to the Drug Control and System Improvement Grant program in the Office of Criminal Justice Planning for purposes of this act.

The office shall allocate this appropriation as follows:

(a) One million five hundred thousand dollars ($1,500,000) to the City of Los Angeles.

(b) Two million five hundred thousand dollars ($2,500,000) to at least three additional cities as determined by the office through a request for proposal.

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:

Because the Los Angeles Police Department will have to cease the

foot patrol program if continuation funding is unavailable by July 1, 1990, it is necessary that this act go into immediate effect.

CHAPTER 1321

An act to amend and supplement the Budget Act of 1990 by adding Item 6870-321-785 to Section 2 thereof, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor September 24, 1990. Filed with Secretary of State September 25, 1990.]

I am deleting the $8,685,000 appropriation contained in Section 2, the $2,366,000 appropriation contained in Section 3, and the $6,319,000 appropriation contained in Section 4 of this bill I am also deleting the language contained in Section 5 of Senate Bill No 1446

This bill would reappropriate $8,418,000 from the General Fund to the State School Fund for the community colleges to be used for program reforms, reappropriate $8,685,000 from monies already committed to the Commission on State Mandates for claims made prior to 1988, as specified, supplement the Budget Act of 1990 by appropriating $1,154,000 from the 1988 Higher Education Capital Outlay Bond Fund for a new cafeteria project at Saddleback Community College

Specifically, this bill would allocate the $8,685,000 reappropriated as follows $2,366,000 for funding average daily attendance above the statutory growth limit for the California Community College (CCC) campuses and $6,319,000 to augment CCC deferred maintenance plans I am vetoing the reappropriation in Section 2 of the bill and vetoing the two appropriations in Sections 3 and 4 of the bill because the $8,685,000 is needed to cover the cost of claims and is not available to be reappropriated Furthermore, the 1990 Budget Act already appropriated funds for both ADA growth and deferred maintenance

With these deletions, I approve Senate Bill No 1446

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Item 6870-321-785 is added to Section 2.00 of the Budget Act of 1990, 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 Education Capital Outlay Bond Fund	1,154,000
Schedule:	
Saddleback Community College District Saddleback College 40.45.207-Cafeteria--Construction	1,154,000

SEC. 2 Of the amount appropriated in Schedule (2) of Item 8885-112-001 of the Budget Act of 1990, eight million six hundred eighty-five thousand dollars ($8,685,000) is hereby reappropriated for the purposes of Sections 2 and 3 of this act.

SEC. 3. Two million three hundred sixty-six thousand dollars ($2,366,000) is appropriated to augment Schedule (a) of Item 6870-101-001 of the Budget Act of 1990, to fund additional average daily attendance above the statutory growth limit. Of this amount, up to one million two hundred thirty-one thousand dollars ($1,231,000) is for allocation to Mt. San Jacinto Community College District, and up to one million one hundred thirty-five thousand dollars ($1,135,000) is for allocation to Riverside Community College District, for new educational centers. The additional average daily attendance funded by this provision shall be a permanent augmentation to the base average daily attendance and revenue in subsequent fiscal years.

SEC. 4. Six million three hundred nineteen thousand dollars ($6,319,000) is appropriated to augment Schedule (o) of Item 6870-101-001 of the Budget Act of 1990.

SEC. 5. The amount reappropriated in accordance with Provision (2) of Item 6870-493 of the Budget Act of 1990, for purposes of funding average daily attendance beyond the statutory growth limit shall be a permanent augmentation to the base average daily attendance and revenue in subsequent fiscal years.

SEC. 6. The sum of eight million four hundred eighteen thousand dollars ($8,418,000) is hereby appropriated from the General Fund to Section B of the State School Fund for the 1990–91 fiscal year to the Board of Governors of the California Community Colleges, for allocation to community college districts in augmentation of Schedule (a) of Item 6870-101-001 of Section 2.00 of the Budget Act of 1990. This appropriation shall be used pursuant to subdivision (a) of Provision 6 of Item 6870-101-001 of Section 2.00 of the Budget Act of 1990 and shall be considered part of the Transitional Program Improvement Funds needed for implementation of Phase II of program reforms pursuant to Chapter 973 of the Statutes of 1988.

SEC. 6. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1322

An act relating to water quality in the New River, and making an appropriation therefor.

[Approved by Governor September 24, 1990 Filed with Secretary of State September 25, 1990]

I am deleting the $100,000 appropriation contained in Section 2 of Senate Bill No 1999

This bill would require the State Water Resources Control Board to conduct a two-year water treatment pilot project for the New River in Imperial County and would appropriate $100,000 from the General Fund for that purpose This bill also requires the SWRCB to report to the Legislature on the findings of the pilot project by April 15, 1993

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 1990, more than $54 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 1991–92. Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Senate Bill No 1999.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The State Water Resources Control Board shall conduct a two-year pilot project to improve the water quality in the New River in Imperial County. The board shall report to the Legislature by April 15, 1993, on the extent to which the project was successful in improving the water quality in the New River. The project shall accomplish the following:

(1) Determine the extent to which wetlands treatment of the New River will improve the water quality and environment.

(2) Identify and list which hazardous or biological materials are mitigated by a wetlands treatment.

(3) Determine those areas of the state whose water quality can be improved by this wetlands treatment.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the State Water Resources Control Board for purposes of the pilot project required by Section 1.

CHAPTER 1323

An act relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 25, 1990.]

I am reducing the appropriation contained in Section 1 5 from $22,990,400 to $10,700,000 in Senate Bill No 1409.

This bill would allocate reductions to the Medically Indigent Adults program reflected in the 1990 Budget Act among counties and provides supplemental funding for local mental health programs which were reduced in order to balance the 1990 Budget Act. I appreciate the difficulties which counties face in dealing with these reductions, and am particularly sympathetic with those reductions which constitute a large portion of their program funding base. For this reason, I am approving the allocation of reductions to the Medically Indigent Adults program and the allocation of $9 million appropriated by this bill to ensure that no county's mental health resources are reduced by more than 25 percent compared with their 1989–90 allocation. In addition, I am approving the allocation of $1.7 million appropriated by this bill for Riverside County's Children's System of Care. I understand that Riverside County initiated its Children's System of Care during 1989–90 with county funds, and that absent this appropriation, the county's successful program would be unable to continue.

Specifically, the reductions would occur as follows:

Section 1.5(b), I am reducing the $4,064,000 appropriation to $3,386,700.

Section 1.5(c), I delete the $2,700,000 appropriation.

Section 1.5(e), I delete the $8,913,100 General Fund appropriation, including the following:

Section 1.5(e)(1), I delete the $4,358,600 appropriation.

Section 1.5(e)(2), I delete the $4,554,500 appropriation.

Moreover, I am deleting the corresponding allocation language to conform to the appropriation deletions, as follows:

Section 2~~(b) One million five hundred thousand dollars ($1,500,000) for the support of the county interagency system for seriously mentally disordered adults pilot projects, pursuant to Part 3 (commencing with Section 5800) of Division 5 of the Welfare and Institutions Code.~~

~~Section 2(c) Two million dollars ($2,000,000) for mental health services for wards and dependents of the court, pursuant to Chapter 1294 of the Statutes of 1989.~~

~~Section 2(c) The remainder for local assistance for Short/Doyle community mental health services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code consistent with current law.~~

The $2,700,000 in federal reimbursements that the bill would appropriate are unlikely to be available, and therefore to allocate those funds would be fiscally imprudent. Furthermore, of the $15,290,400 in General Fund appropriated by the bill, $4,040,330 has already been counted toward the 1990–91 reserve, and an additional $5,488,392 reverted to the reserve as of June 30, 1990. This leaves $5,761,678 which could be appropriated or allowed to revert Combined with the $5,000,000 in Cigarette and Tobacco Surtax Fund monies appropriated by the bill, the total amount available is $10,761,678 Thus, I am approving the appropriation of substantially all of the funding which is available.

The demands placed on budget resources and the refusal of the Legislature to waive a portion of Proposition 98 education funds, resulted in major reductions in virtually all other state programs. With legislation I will be signing and the budget enacted in July 1990, more than $54 billion in state funds will be appropriated this fiscal year.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92. Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With these reductions and deletions, I approve Senate Bill No. 1409.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. (a) For purposes of the 1990–91 fiscal year, one hundred fifty million dollars ($150,000,000) shall be added to the amounts appropriated by Item 4260-111-001 of the Budget Act of 1990 for the Medically Indigent Services Program and the County Medical Services Program. This amount shall be added pursuant to Section 16703 of the Welfare and Institutions Code.

(b) The amounts in the following schedule shall be deducted from the amount the county or the county medical services program would have received if the one hundred fifty million dollars ($150,000,000) had been appropriated by Item 4260-111-001 of the Budget Act of 1990:

Alameda	$ 6,689,330
Contra Costa	2,930,990
Fresno	3,589,723
Kern	2,138,692
Lake	389,827
Los Angeles	58,194,656
Mendocino	631,384
Merced	894,540
Monterey	1,403,497
Orange	9,708,521
Placer	598,096
Riverside	5,364,559
Sacramento	5,845,153
San Bernardino	4,993,964
San Diego	12,033,000
San Francisco	2,000,100
San Joaquin	2,382,127
San Luis Obispo	892,331
San Mateo	2,103,353
Santa Barbara	1,354,274
Santa Clara	5,576,488
Santa Cruz	1,337,866
Stanislaus	1,945,585
Tulare	1,664,444
Ventura	2,241,557
Yolo	658,678
County Medical Services Program	12,437,263

(c) The schedule set forth in subdivision (b) shall only be used to calculate the reduction of one hundred fifty million dollars ($150,000,000) made in the 1990–91 fiscal year.

SEC. 1.5. The sum of twenty-two million nine hundred ninety thousand four hundred dollars ($22,990,400) is hereby appropriated to the State Department of Mental Health from the following sources:

(a) Two million three hundred thirteen thousand three hundred dollars ($2,313,300) from funds appropriated by Item 4440-141-001 of Chapter 313 of the Statutes of 1988.

(b) Four million sixty-four thousand dollars ($4,064,000) from funds appropriated by Item 4440-141-001 of Chapter 93 of the Statutes of 1989.

(c) Two million seven hundred thousand dollars ($2,700,000) from federal funds owed to the State of California for child welfare services under Section 406(e)(1) of the federal Social Security Act (Section 606(e)(1) of Title 42 of the United States Code) for emergency assistance for needy families with children, to the extent these funds are received.

(d) Five million dollars ($5,000,000) from the Unallocated

Account of the Cigarette and Tobacco Products Surtax Fund.

(e) Eight million nine hundred thirteen thousand one hundred dollars ($8,913,100) from the General Fund, including the following:

(1) Four million three hundred fifty-eight thousand six hundred dollars ($4,358,600) from funds appropriated in Item 4440-141-001 of Chapter 135 of the Statutes of 1987.

(2) Four million five hundred fifty-four thousand five hundred dollars ($4,554,500) from funds appropriated in Item 4440-016-001 of Chapter 135 of the Statutes of 1987.

SEC. 2. The amounts appropriated by Section 1 shall be allocated as follows:

(a) Up to nine million dollars ($9,000,000) for local assistance for Short-Doyle community mental health services, to be used to ensure that county allocations for the 1990–91 fiscal year do not fall below 75 percent of the allocations for the 1989–90 fiscal year.

(b) One million seven hundred thousand dollars ($1,700,000) for the continuation during the 1990–91 fiscal year of the coordinated delivery of mental health treatment services for children in Riverside County, pursuant to Chapter 6.8 (commencing with Section 5565.10) of Part 1 of Division 5 of the Welfare and Institutions Code.

(b) One million five hundred thousand dollars ($1,500,000) for the support of the county interagency system for seriously mentally disordered adults pilot projects, pursuant to Part 3 (commencing with Section 5800) of Division 5 of the Welfare and Institutions Code.

(c) Two million dollars ($2,000,000) for mental health services for wards and dependents of the court, pursuant to Chapter 1294 of the Statutes of 1989.

(e) The remainder for local assistance for Short-Doyle community mental health services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code consistent with current law.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that there be no reduction or interruption in needed services for persons in the state, it is necessary that this act take effect immediately.

CHAPTER 1324

An act to add Sections 44017.3, 44017.5, and 44036.8 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990.]

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

SECTION 1. Section 44017.3 is added to the Health and Safety Code, to read:

44017.3. (a) Each smog check station shall have posted conspicuously in an area frequented by customers a list of price ranges indicating the maximum amounts established by law to be spent on repairs required to cause an automobile to pass a smog check. The signs shall only be required in stations where licensed smog check mechanic repairs are also performed. In stations where licensed smog check mechanic repairs are not performed, the station shall have posted conspicuously in an area frequented by customers a statement that mechanics are not available and repairs are not performed.

(b) The sign dimensions and letter typeface and point size shall be established by regulation by the Bureau of Automotive Repair and shall be similar to other posted signs required by the bureau.

(c) The sign shall read:

"Notice

Under California law, the following amounts are the maximum you are required to spend in repairing the engine and exhaust systems to bring your automobile into compliance with emission control system standards:

Year of Auto	Maximum Amount
'55 - '71	$ 50.00
'72 - '74	$ 90.00
'75 - '79	$125.00
'80 - '89	$175.00
'90 - On	$300.00

These amounts do not include the replacement costs for replacing missing, modified, or disconnected emission control system parts.

If your repair estimate exceeds the above amounts, you may elect to pay that amount and have the repairs completed, or request this shop to call the referee station."

(d) The specific amounts enumerated in the sign shall be in compliance with Section 44017. The adjustments in the repair cost limitations authorized in subdivision (b) of that section shall also be reflected in the sign.

SEC. 2. Section 44017.5 is added to the Health and Safety Code, to read:

44017.5. At the earliest possible date, as determined by the Bureau of Automotive Repair, the bureau shall implement at the referee stations, where appropriate, an alternative workday schedule which substitutes Saturday working hours in lieu of another day during the Monday through Friday workweek, in order to provide for increased availability of referee station services.

SEC. 3. Section 44036.8 is added to the Health and Safety Code, to read:

44036.8. The data collected by the equipment used by a smog check station, as required by regulations of the Bureau of Automotive Repair, may be used by a licensed smog check station mechanic or operator when appealing a citation issued by the Bureau of Automotive Repair.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 1325

An act to amend Sections 3050.2, 3050.7, and 3060 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

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

SECTION 1. Section 3050.2 of the Vehicle Code is amended to read:

3050.2. (a) Obedience to subpoenas issued to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing, may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Compliance with discovery procedures authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the secretary of the board. The secretary may, at the direction of the board, upon a showing of failure to comply with authorized discovery without substantial justification for that failure, dismiss the

protest or petition or suspend the proceedings pending compliance. The secretary may, at the direction of the board, upon a failure to comply with authorized discovery without substantial justification for that failure, require payment of costs incurred by the board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. Nothing in this section precludes the secretary from making application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1.

SEC. 2. Section 3050.7 of the Vehicle Code is amended to read:

3050.7. (a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to any protest or petition submit a proposed stipulated decision and proposed order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the secretary of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless any member of the board notifies the secretary of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, subdivision (b) of Section 3060, which requires a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without any further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of any party to comply with any specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of any specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

SEC. 3. Section 3060 of the Vehicle Code is amended to read:

3060. Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of the following conditions are met:

(a) The franchisee and the board have received written notice from the franchisor as follows:

(1) Sixty days before the effective date thereof setting forth the

specific grounds for termination or refusal to continue.

(2) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(A) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.

(B) Misrepresentation by the franchisee in applying for the franchise.

(C) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(D) Any unfair business practice after written warning thereof.

(E) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

(3) The written notice shall contain, on the first page thereof, a conspicuous statement which reads as follows: "NOTICE TO DEALER: You may be entitled to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. It is important that you act promptly."

(b) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice or within 10 days after receiving a 15-day notice. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(c) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

The franchisor shall not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of the notice, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

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 enable the New Motor Vehicle Board to carry out its mandate to quickly resolve disputes between automobile manufacturers and franchised car dealers, it is necessary that this act take effect immediately.

CHAPTER 1326

An act to amend Sections 7030, 7071.11, 7075, and 7083 of, to add Sections 7065.4, 7075.1, and 7137.5 to, and to repeal and add Section 7076 of, the Business and Professions Code, relating to contractors, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

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

SECTION 1. Section 7030 of the Business and Professions Code is amended to read:

7030. Every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826."

SEC. 2. Section 7065.4 is added to the Business and Professions Code, to read:

7065.4. The registrar may accept the qualifications of an applicant who is licensed as a contractor in a similar classification in another state if that state accepts the qualifications of a contractor licensed in this state for purposes of licensure in that other state, and if the board ascertains, on a case-by-case basis, that the professional qualifications and conditions of good standing for licensure and continued licensure are at least the same or greater in that state as in California. The registrar may waive the trade examination for that applicant if the applicant provides written certification from that other state in which he or she is licensed, that the applicant's license has been in good standing for the previous five years.

SEC. 3. Section 7071.11 of the Business and Professions Code is amended to read:

7071.11. (a) A copy of the complaint in a civil action commenced by a person claiming against a bond required by this article shall be served by registered or certified mail upon the registrar by the clerk of the court at the time the action is commenced and the registrar shall maintain a record, available for public inspection, of all actions so commenced. The claim of any employee of the contractor for

wages and fringe benefits shall be a preferred claim against the bond. The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of three thousand dollars ($3,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims with priority to claims for wages and fringe benefits. Any action, other than an action to recover fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover fringe benefits shall be brought within six months from the date that the fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the fringe benefit contributions were due.

(b) When the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, notify the registrar. The notice shall contain, on a form prescribed by the registrar, the name and license number of the contractor, the surety bond number, the amount of payment, the statutory basis upon which the claim is made, and the names of the person or persons to whom payments are made.

(c) Any judgment or admitted claim against, or good faith payment from, a bond required by this article shall constitute grounds for disciplinary action against the licensee, except in those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment. The license may not be reissued or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, the license may not be reissued or reinstated while any surety remains unreimbursed for loss and expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to disciplinary

action under this section. The board shall require the licensee to file a new bond in an amount as required pursuant to Section 7071.8.

(d) Legal fees may not be charged against the bond by the board.

(e) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment thereof shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Any action, other than an action to recover fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

SEC. 4. Section 7075 of the Business and Professions Code is amended to read:

7075. The license shall be displayed in the licensee's main office or chief place of business. Satisfactory evidence of the possession of a license and the current renewal thereof shall be provided by the licensee upon demand.

SEC. 4.5. Section 7075.1 is added to the Business and Professions Code, to read:

7075.1. (a) No license, regardless of type or classification, shall be transferable to any other person or entity under any circumstances.

(b) A license number may be reissued after cancellation,

revocation, suspension, or expiration beyond the renewal period specified in Section 7141, only under the following circumstances:

(1) To an individual upon application.

(2) To a partnership upon application if there is no change in the partners or partnership structure.

(3) To a corporation when the parent corporation has merged or created a subsidiary to act as the licensed contractor and the new entity is being formed to continue the business of the formerly licensed corporation.

SEC. 5. Section 7076 of the Business and Professions Code is repealed.

SEC. 6. Section 7076 is added to the Business and Professions Code, to read:

7076. (a) An individual license shall be canceled upon the death of a person licensed as an individual.

An immediate member of the family of the deceased licensee shall be entitled to continue in business under the license for a reasonable amount of time to be determined by rules of the board, provided application for permission for a continuance is made to the registrar within 90 days after the death. Registrar approval of the continuance of an individual license may be contingent upon meeting the bond requirements of Sections 7071.5 and 7071.6 within 90 days of notification by the board of that requirement. A new license is required if the immediate member of the family intends to continue contracting after the continuance expires.

(b) A partnership license shall be canceled upon the death of a partner.

The registrar shall be notified in writing, within 90 days, of the death of a partner. The license shall be canceled upon the date of death. Failure to notify the registrar of the death of a partner within 90 days is grounds for disciplinary action.

A remaining partner or partners shall be entitled to continue in business under the license, upon the death of a partner, for a reasonable length of time to be determined by rules of the board, provided application for permission for a continuance is made to the registrar within 90 days of the death. A new license is required if the remaining partner or partners intends to continue contracting after the continuance expires.

(c) A partnership license shall be canceled upon the disassociation of a partner or upon the dissolution date of the partnership.

The registrar shall be notified in writing, within 90 days, of the disassociation of a partner or dissolution of the partnership. Failure of a partner to notify the registrar within 90 days from the disassociation or dissolution, shall cause the license to be canceled effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar of the disassociation of a partner or dissolution of a partnership within 90 days is grounds for disciplinary action.

A remaining partner or partners shall be entitled to complete contracts entered into before the event causing the cancellation for

a reasonable length of time to be determined by rules of the board, provided application for permission for a continuance is made to the registrar within 90 days after the event causing cancellation has occurred. A new license is required if the remaining partner or partners intends to undertake new work and continue contracting.

(d) A joint venture license shall be canceled, upon the cancellation, revocation, or disassociation of any of its entity licenses or upon the dissolution date of the joint venture.

The registrar shall be notified in writing, within 90 days, of the disassociation of a joint venture entity or dissolution of the joint venture. Failure of the joint venture entity to notify the registrar within 90 days from the disassociation or dissolution shall cause the license to be canceled effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar of the disassociation of a joint venture entity or dissolution of a joint venture within 90 days is grounds for disciplinary action.

Any remaining entity or entities of the joint venture shall be entitled to complete contracts entered into before the event causing the cancellation for a reasonable length of time to be determined by rules of the board, provided application for permission for a continuance is made to the registrar within 90 days after the event causing cancellation has occurred. A new license is required if any remaining entity or entities intend to undertake new work and continue contracting.

Any individual license, partnership or joint venture continued in accordance with this section is subject to all other provisions of this chapter.

(e) A corporation license shall be canceled effective as of the date the corporation dissolves, merges out of existence, or surrenders its right to do business in California.

(f) The registrar shall review and accept the petition of a licensee who disputes the date of cancellation upon a showing of good cause. This petition shall be received within 90 days of the board's official notice of cancellation.

SEC. 7. Section 7083 of the Business and Professions Code is amended to read:

7083. All licensees shall notify the registrar in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

Failure of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office.

Failure to notify the registrar of the changes within the 90 days is grounds for disciplinary action.

SEC. 8. Section 7137.5 is added to the Business and Professions Code, to read:

7137.5. The sum of ten thousand dollars ($10,000) shall be transferred from the Contractors' License Fund to the Controller for the exclusive use of the California Uniform Construction Cost Accounting Commission.

The commission shall prepare a recommendation to the Legislature for a local public agency source to fund the commission beginning July 1, 1991, which will provide revenue supported by the contract activities represented by the commission's authority.

Upon adoption of this funding program, the commission shall reimburse the Contractors' License Fund in the amount of ten thousand dollars ($10,000).

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 for the commission to continue its activities, it is imperative that an alternate funding source be established at the earliest possible time.

CHAPTER 1327

An act to add Article 3.1 (commencing with Section 73400) to, and to repeal andadd Article 3 (commencing with Section 73390) and Article 11.6 (commencing with Section 73750) of, Chapter 10 of Title 8 of the Government Code, relating to courts.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

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

SECTION 1 Article 3 (commencing with Section 73390) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 2. Article 3 (commencing with Section 73390) is added to Chapter 10 of Title 8 of the Government Code, to read·

Article 3. Kings County Municipal Court

73390. This article applies to the municipal court for the County of Kings. The court referred to in this article shall be the successor of the court to be established by the consolidation of the Corcoran, Hanford, and Lemoore Judicial Districts by the Board of Supervisors of the County of Kings, and it shall be known as the Kings County Municipal Court.

73391. (a) Upon the consolidation of the Corcoran, Hanford, and Lemoore Judicial Districts, the Kings County Municipal Court District shall consist of the following divisions:

(1) Corcoran Division.

(2) Hanford Division.

(3) Lemoore Division.

(b) The boundaries of the divisions of the Kings County Municipal Court District shall be established by the board of supervisors.

73391.5. The board of supervisors may, at any time, request a determination by the Judicial Council as to whether the countywide judicial workload justifies a countywide municipal court with four judges. If the Judicial Council so determines, the board of supervisors may request that the Legislature consolidate the Avenal Judicial District within the Kings County Municipal Court District and establish an Avenal Division.

73392. There are three judges in the Kings County Municipal Court District. However, upon the consolidation of the Avenal Judicial District by the Legislature, pursuant to Section 73391.5, there shall be four judges in the Kings County Municipal Court District. There shall be one judge for each division.

Notwithstanding subdivision (c) of Section 77200, these judges shall not be deemed to constitute judgeships authorized on or after January 1, 1990, for purposes of the Brown-Presley Trial Court Funding Act.

73393. On the operative date of this article, the Municipal Court Judge of the Hanford Municipal Court District and the Justice Court Judges of the Corcoran and Lemoore Judicial Districts shall assume the positions of Municipal Court Judges of the Hanford, Corcoran, and Lemoore Divisions, respectively. On the operative date of the consolidation of the Avenal Judicial District within the Kings County Municipal Court District, the Justice Court Judge of the Avenal Judicial District shall assume the position of Municipal Court Judge of the Avenal Division. Judges shall be elected for six-year terms beginning in 1994.

73394. For the purposes of qualification and election of judges, the "division" referred to in this article is and shall continue to be the "district" referred to in subdivision (b) of Section 16 of Article VI of the California Constitution. The judge of each division shall be elected from the division and by only the electors of the division, and not from the Kings County Municipal Court District at large.

73395. The judges of the Kings County Municipal Court District shall, by majority vote, elect one of the judges of the district to serve as presiding judge of the district and shall formulate rules and regulations not inconsistent with law or rules and regulations adopted and prescribed by the Judicial Council for transfer of cases, assignment of judges, scheduling of vacation of judges, and other administrative matters such as will promote uniformity of procedures and efficiency and economy in the business of the district. Those rules and regulations shall be administered by the court executive officer under the supervision and control of the presiding judge of the district. Any rules and regulations adopted pursuant to Section 72002.1 shall be adopted by a majority vote of the judges of the district.

73396. Facilities for the court shall be maintained in the Cities of Hanford, Corcoran, Lemoore, and (if incorporated pursuant to Section 73391.5) Avenal, and in such other locations within the

County of Kings as are designated by the board of supervisors. The court shall hold sessions at each facility as business requires. At the direction of the court, arraignment of criminal defendants who are in custody at the Kings County Jail facility shall be held in the court facility located in Hanford.

73397. Notwithstanding any other provision of law, the court may adopt local rules for purposes of selecting trial jurors pursuant to Section 203 of the Code of Civil Procedure.

Trial jurors for each session of the courts of the district shall be selected from persons residing within the divisions within which such sessions are held. Upon adoption of a rule pertaining thereto by the judges, any division may use the same jury panel as that summoned for service in the superior court. When selected from the superior court panel, persons so selected for jury duty in the municipal court division need not be residents of the division.

73398. There shall be one clerk of the court, known as the clerk-administrator, who shall be appointed by and serve at the pleasure of the majority of the judges. The clerk-administrator shall receive a salary specified in Range 84.0.

73399. The clerk-administrator may appoint:

(1) One account clerk III who shall receive a salary in Range 41.0.

(2) Three court clerks who shall each receive a salary specified in Range 42.0.

(3) Fifteen municipal court clerks I, II, or III, who shall each receive a salary specified in Range 34.5, 39.5, or 44.5, respectively.

(4) One supervising municipal court clerk who shall receive a salary specified in Range 76.5.

(b) The court executive officer, with the approval of the board of supervisors, may appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second fiscal year following the fiscal year in which the appointment was made, unless subsequently ratified by the Legislature.

(c) Whenever reference to a numbered salary range is made in any section of this article, the schedule of hourly rates of pay and approximate monthly equivalents found in the Salary Resolution of the County of Kings in effect on January 1, 1990, shall apply.

(d) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second fiscal year following the fiscal year in which such adjustment in salary is made, unless subsequently ratified by the Legislature.

73399.1. The clerks and other attachés excluding any constables of the justice courts in Kings County shall succeed as authorized by law to the equivalent municipal court positions.

73399.2. The sheriff and his or her deputies shall act as ex officio

marshal and deputy marshals of the court.

73399.3. Notwithstanding any other provision of law, upon the consolidation authorized pursuant to Section 73391.5 the incumbent constable of the Avenal Justice Court shall become an employee of the Sheriff's Department in Kings County in a classification specified by the board of supervisors for the balance of the term he or she would have served as constable. He or she shall not suffer any diminution in salary or benefits during that time.

73399.4. All officers and employees of the Kings County Municipal Court shall be entitled to the same retirement, vacations, and other benefits allowed to employees of the county and be subject to the personnel regulations, memorandum of understanding, management benefit package, and the affirmative action plan of the County of Kings as they exist on January 1, 1990.

73399.5. The presiding judge may appoint as many reporters as the business of the court requires, who shall be known as official reporters pro tempore, and who shall hold office at his or her pleasure. The reporter shall serve without salary but shall receive for his or her services in reporting testimony and proceedings in such court, the same compensation as is paid reporters pro tempore of the superior court in Kings County, which in criminal cases shall, upon order of the court, be a charge against the general fund of the county.

73399.6. Fees for transcription of testimony and proceedings in the court shall be paid by the litigants to official reporters pro tempore as otherwise provided by law. In all cases where by law the court may direct the payment of transcription fees out of the county treasury, such fees shall, upon order of the court, be paid from the general funds, including fees for transcription of testimony in proceedings in criminal cases as provided in Sections 69947 to 69953, inclusive, which shall be paid from the county treasury.

73399.7. This article shall not become operative until the effective date of an ordinance of the board of supervisors approving the consolidation and reorganization of the municipal court.

SEC. 3. Article 3.1 (commencing with Section 73400) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 3.1. Kings County Municipal Court

73400. This article applies to the municipal court established in the Hanford Judicial District, County of Kings.

73401. There shall be one judge.

73402. There shall be one clerk of the court, known as the clerk-administrator, who shall be appointed by the presiding judge of the court. He or she shall receive a salary specified in Range 76.5.

73404. (a) The clerk-administrator, with the concurrence of the presiding judge, may appoint:

(1) One account clerk III who shall receive a salary specified in Range 41.0.

(2) Two deputy municipal court clerks III who shall each receive a salary specified in Range 44.5.

(3) Three courtroom deputy municipal court clerks who shall each receive a salary specified in Range 42.0.

(4) Six deputy municipal court clerks I/II who shall each receive a salary specified in Range 34.5 or Range 39.5 if promoted to the II level.

(b) The clerk-administrator, with the concurrence of the presiding judge and approval of the board of supervisors, may appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second year following the year in which the appointment was made, unless subsequently ratified by the Legislature.

73405. (a) Whenever reference to a numbered salary range is made in any section of this article, the schedule of hourly rates of pay and approximate monthly equivalents found in the Salary Resolution of the County of Kings in effect on October 3, 1988, shall apply.

(b) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second year following the year in which such adjustment in salary is made, unless subsequently ratified by the Legislature.

(c) The persons employed in the positions named in this article shall be entitled to all employee benefits and holidays as they are provided and made applicable to positions within the classified service pursuant to personnel ordinances and resolutions adopted by the Board of Supervisors of the County of Kings.

(d) All matters affecting administration of salary and benefits, selection, appointment, reclassification, and discipline of such municipal court officers and employees in those positions which they hold shall be governed by the personnel ordinances and resolutions adopted by the Board of Supervisors of the County of Kings, to the extent that such ordinances and resolutions are not contrary to state law.

73406. The Sheriff of the County of Kings and his or her deputies specifically designated by him or her shall be the ex officio marshal and deputy marshals, respectively, of the court and shall act as such without additional compensation.

73407. (a) The presiding judge may appoint as many court reporters, known as official reporters pro tempore, as the business of the court requires. Each official reporter pro tempore shall perform the duties required of him or her by law. These reporters shall hold office at the pleasure of the presiding judge.

(b) Fees for reporting and for transcription of testimony and proceedings in the court shall be paid by the litigants to official reporters pro tempore as provided in Sections 69947 to 69954, inclusive, or as otherwise provided by law as paid to reporters in the Superior Court of the County of Kings. In all cases where by law the

court may direct the payment of reporting and tanscription fees out of the county treasury, including fees for reporting and transcription of testimony and proceedings in criminal cases as provided in Section 69952, such fees shall, upon order of the court, be paid from the general fund of the county treasury.

73408. This article shall only be operative until the operative date of the Article 3 (commencing with Section 73390) added to this Chapter by the act that enacted this article.

SEC. 4. Article 11.6 (commencing with Section 73750) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 5. Article 11.6 (commencing with Section 73750) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 11.6. Madera County

73750. This article applies to the municipal court established in the Madera-Chowchilla Judicial District in the County of Madera.

73751. There are three judges. Notwithstanding subdivision (c) of Section 77200, these judges shall not be deemed to constitute judgeships authorized on or after January 1, 1990, for purposes of the Brown-Presley Trial Court Funding Act.

73752. (a) Facilities for the court shall be maintained at the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors.

(b) The judges of the court may, by rule, establish an area surrounding a court location from which jurors for trials held at that location shall be selected.

73753. (a) There is one marshal who shall be appointed by the board of supervisors from among the constables of the superseded judicial districts on the operative date of this section who shall receive as compensation the salary specified in Range 22.5.

(b) Notwithstanding any other provisions of law, when a vacancy occurs in the office, the voters of the judicial district shall elect the marshal at a general state election or special election for a term of six years.

73754. The constable in any superseded judicial district on the operative date of this section who is not appointed marshal shall become a deputy marshal and shall receive as compensation the salary specified in Range 18.5.

73755. The marshal, with the approval of the board of supervisors, may appoint such additional deputy marshals and clerks as may be necessary. Such additional deputy marshals and clerks shall serve at the pleasure of the marshal. The board of supervisors shall designate the positions, job titles, and salary ranges for such positions by resolution.

73756. (a) There shall be one administrative officer of the court known as the municipal court clerk-administrator, who shall be appointed by and serve at the pleasure of a majority of the judges of

the court. He or she shall receive a salary at Range 15.5 of the Madera County Salary Resolution.

(b) All clerical employees of the superseded justice courts and constable offices on the operative date of this section shall become clerical employees of the municipal court, with no loss of salary or benefits or civil service status, as follows:

(1) One supervising municipal court clerk II who shall receive the salary specified in Range 13.5.

(2) Two supervising municipal court clerks I who shall receive the salary specified in Range 12.5.

(3) Six municipal court clerks III who shall receive the salary specified in Range 10.5.

(4) Eight municipal court clerks I or II who shall receive the salary specified in Range 7 or 9.

(5) One municipal court clerk I or II (½ time) who shall recieve the salary specified in Range 7 or 9.

(6) Two office assistants I or II who shall receive the salary specified in Range 4 or 6.

(c) Notwithstanding Article 4 (commencing with Section 72150) or any other provision of this article, whenever the business of the court or other emergency requires a greater number of employees or reclassification of employees in order to effectively carry out the duties and functions of the court, a majority of the judges of the court 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 positions shall designate the position, title, and salary range.

(d) At the request of the judges or the clerk-administrator, the county personnel department shall assist in the recruitment and examination of court personnel. Personnel hired or appointed as official reporters, official interpreters, research attorneys, or other nonclerical positions on or after the operative date of this article shall serve at, and may be terminated at, the pleasure of a majority of the judges. Other provisions of the county civil service or personnel rules or procedures shall not be applicable to court employees first hired or appointed on or after the operative date of this subdivision unless made applicable by local court rule. Benefits other than salary shall, for all court personnel, be the same as are now or may hereafter be provided to equivalent county classifications, as such equivalency is determined by agreement of the majority of the judges and the board of supervisors, but shall not exceed those provided for equivalent county classifications. To the extent necessary, and for the sole purpose of implementing the intent of this subdivision, court employees shall be deemed county employees for inclusion in those benefit programs provided county employees as a group or groups. All court employees except pro tempore court reporters shall, if otherwise eligible under statutory and retirement system membership requirements, be included in the county's retirement system.

73757. (a) Whenever a reference is made to a numbered salary range in any section of this article, the schedule of monthly salaries found in the salary resolution for the County of Madera in effect shall apply.

(b) In the event the Board of Supervisors of the County of Madera amends the resolution establishing salary ranges and monthly salary rates for the personnel of the County of Madera 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 act of the board of supervisors, or the effective date of this section, whichever is earlier.

73758. The officers, employees, and attachés of the municipal court shall be entitled to the same vacation, sick leave, and similar benefits and privileges as are granted to other employees of the County of Madera under ordinances and resolutions of the board of supervisors.

73759. Official reporters shall be appointed by and serve at the pleasure of the majority of the judges of the court pursuant to Section 72194. The salary of each official reporter shall be at the rates provided for by Section 70045.12, which shall be a charge against the general fund of the county.

73760. All matters effecting the employment, appointment, promotion, demotion, termination, transfer, layoff, or discipline of such municipal court officers, employees, and attachés which are not specifically determined by this article shall be governed and regulated by the then current ordinances and resolutions of the Madera County Civil Service Commission and the board of supervisors.

73761. Except as otherwise provided by resolution of the board of supervisors, all officers, employees, and attachés of the municipal court shall devote their full time to the performance of their duties.

73762. Notwithstanding Article 4 (commencing with Section 72150) or any other provision of this article, in order to equalize the compensation of employees of the municipal court with the compensation paid to county employees with commensurate duties and responsibilities, upon the recommendation of a majority of the judges of the court, and with the approval of the board of supervisors, the officers, employees, and attachés of the court may be paid a compensation not exceeding 125 percent of the amounts provided for in this article. Such increases may be made operative at the same time as the higher compensation becomes operative for similar positions within the County of Madera.

73763. Except as otherwise provided by resolution of the board of supervisors, all fees collected by court officers and attachés, including the marshal and the deputy marshals, shall be deposited in the county treasury.

73764. Any change in the number, classification, or compensation of municipal court personnel implemented pursuant to this article shall only be effective until January 1 of the second calendar year

after the calendar year in which the change occurs, unless ratified by the Legislature.

SEC. 6. Sections 4 and 5 of this act shall become operative upon the consolidation by the Board of Supervisors of Madera County of the Chowchilla Judicial District, the Borden Judicial District, and the Madera Judicial District into a single judicial district to be known as the Madera-Chowchilla Judicial District.

CHAPTER 1328

An act to add Chapter 5 (commencing with Section 14560) to Part 5.3 of Division 3 of Title 2 of the Government Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

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

SECTION 1. Chapter 5 (commencing with Section 14560) is added to Part 5.3 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 5. SHORT-TERM FINANCING

Article 1. Findings and Declarations

14560. (a) The Legislature hereby finds and declares that it is in the best interests of the people of California to immediately finance retrofit projects to make state highways safe during seismic events, and to offset any possible delays caused by these projects on approved state highway projects contained in the state highway improvement program for 1988 and to authorize this financing from motor vehicle fuel tax revenues in order to achieve the greatest economic benefit in the completion of these projects.

(b) In order to accomplish these objectives, the Legislature has enacted this chapter.

14560.1. The Legislature further finds and declares:

(a) That additional financing mechanisms are necessary and desirable to alleviate cash-flow imbalances caused by the expected pattern of receipt of motor vehicle fuel tax revenues, in order to allow the state to proceed expeditiously to construct highway projects included in the 1988 State Transportation Improvement Program, which projects might otherwise be delayed because of the high priority given to seismic safety projects.

(b) That short-term financing mechanisms to anticipate receipt of motor vehicle fuel tax revenues may result in lower net costs to the state by avoiding increases in project costs arising from price inflation.

(c) That these financing mechanisms are therefore equivalent to and consistent with the use of motor vehicle fuel taxes as provided in subdivision (a) of Section 1 of Article XIX, and are not inconsistent with Section 5 of Article XIX, Section 5, of the California Constitution.

14560.2. This chapter shall be liberally construed to effect its purposes and in a manner that will promote its purposes.

Article 2. General Financing Authorization

14560.5. The commission may authorize short-term financing mechanisms which do not constitute bonds or debt requiring the approval of the voters under any provision of the California Constitution pursuant to this chapter for financing seismic safety retrofit projects or to mitigate the effects of the priority given to seismic safety retrofit projects on the construction or acquisition of any project contained in the state highway improvement program for 1988 for which the commission is authorized to allocate funds, and with respect to which it makes both of the following findings:

(a) That completion of the project proposed to be financed would be delayed solely due to a lack of funding directly attributable to the seismic safety retrofit program, causing it to be completed in a subsequent fiscal year.

(b) That before funds are expected to become available for the project to be financed, construction or right-of-way acquisition costs are expected to increase by an amount which exceeds the expected cost of financing pursuant to this chapter.

14560.7. (a) Neither the department nor the commission shall enter into any agreement for professional services necessary for the preparation of or issuance of financing instruments authorized pursuant to this chapter other than for the development of the report required pursuant to subdivision (b) or authorize the issuance of any financing instruments except pursuant to a specific authorization to do so contained in the annual Budget Act.

(b) The commission shall, in cooperation and consultation with the department, develop a report which includes (1) a detailed list of earthquake retrofit projects to be funded in the immediately following fiscal year; (2) an analysis of the impact of funding the earthquake retrofit projects on other projects contained in the state transportation improvement program for 1988 proposed for funding in the same fiscal year; (3) a statement of the specific conditions necessitating the accelerated funding of each project to be financed, including a schedule for completion of the project and the findings made pursuant to Section 14560.5; and (4) a specific request for authorization for the commission to enter into any related agreements, or to issue financing instruments as necessary. The report shall be adopted by the commission with the concurrence of the Director of Transportation, and shall be transmitted to the Legislature and the Governor by April 1 of each year.

14561. The total present value of the payments to be made

pursuant to all contracts or notes entered into pursuant to this chapter shall not exceed the amount necessary to mitigate the effects of the priority given to seismic safety retrofit projects on projects contained in the state highway improvement program for 1988 for which the commission is authorized to allocate funds.

14561.3. (a) This chapter is separate and complete authority for all of the actions authorized by this article. The issuance of short-term financing mechanisms pursuant to this chapter need not comply with any other provision of law applicable to the issuance of short-term financing instruments.

(b) Solely for the purpose of approving short-term financing mechanisms pursuant to this chapter, neither the commission nor the department shall be required to comply with of Division 13 (commencing with Section 21000) of the Public Resources Code.

Article 3. Motor Vehicle Fuel Tax Anticipation Notes

14562.1. If the commission determines that revenues derived from the motor vehicle fuel license tax and the use fuel tax are expected to be insufficient to pay for programmed seismic safety projects pursuant to appropriations made by the Legislature, and also for other projects included in the 1988 State Transportation Improvement Program without delay, but that sufficient revenues will be received over the ensuing five-year period during which those appropriations are effective, specific authorization for short-term financing has been received in the Budget Act, and the commission and the department satisfy all the other requirements of Article 2 (commencing with Section 14560.5), the commission may adopt a resolution for the issuance of notes secured as provided in this article, and may, with the approval of the Director of Finance, issue notes to satisfy the appropriations made for seismic safety and other transportation projects prior to the receipt of reasonably anticipated income to pay those appropriations.

14562.2. Notes issued pursuant to this article may be sold by the Treasurer from time to time on a negotiated or a competitive bid basis as determined by the Treasurer.

14562.3. (a) At the discretion of the Treasurer, notes issued pursuant to this article may be one or more of the following:

(1) Negotiable.

(2) Payable to order or to bearer.

(3) Issued in any denomination.

(4) Made payable on a fixed date or upon demand of the holder of the note.

(5) Subject to prepayment or redemption at the option of the commission or at the option of the holder.

(b) Notes issued pursuant to this article (including notes issued to refund earlier notes) shall comply with all of the following requirements:

(1) Mature not later than five years from the date the note is issued and shall not be renewable beyond that date.

(2) Bear interest at a rate or rates to be determined and payable as provided by the resolution adopted by the commission.

(3) Contain any other provisions which the commission deems appropriate.

14562.4. Any revenues contained in the State Highway Account in the State Transportation Fund during the five-year period for which the notes are outstanding are available for the payment of those notes and the interest on them until they are fully paid and discharged. There shall be created a first lien and security interest on revenues derived from the motor vehicle fuel license tax and the use fuel tax in the State Highway Account to secure all notes issued under this article. No notes issued pursuant to this article shall be or become a lien, charge, or liability against the State of California or against its property or funds except to the extent of the pledges expressly made by this article. Every note issued pursuant to this article shall contain a recital on its face stating that neither the payment of the principal nor any part of it, nor any interest on it, constitutes a debt, liability, or general obligation of the State of California other than as provided in this article. The commission may not pledge the credit or taxing power of the state.

14562.5. Notes issued pursuant to this article are legal investments for any of the following:

(a) Trust funds.

(b) Insurers.

(c) Savings and loan associations.

(d) Banks.

(e) State agencies, cities, counties, cities and counties, or other public agencies or corporations.

14562.6. Notes issued pursuant to this article are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of notes by banks as security for deposits of funds of the state and its agencies, or of any city, county, city and county, or other public agency or corporation.

14562.7. Any state or local agency that is authorized to invest funds in its treasury in securities which are legal investments for savings banks may invest the funds in notes of the state issued under this article.

14562.8. Whenever the Treasurer determines that it will increase the salability of the notes to obtain, prior to or after sale, a legal opinion as to the validity of the notes from attorneys other than the Attorney General, the Treasurer may obtain that legal opinion.

14562.9. Notwithstanding Section 13340, there is hereby continuously appropriated from the State Highway Account in the State Transportation Fund, without regard to fiscal years, the amount necessary to pay the interest on, and the principal of, any notes issued pursuant to this article as the notes become due and payable.

14562.10 Subject to the limitations of Article 2 (commencing with Section 14560.5), the commission and the department may

employ financial consultants, advisers, accountants, legal counsel and underwriters as may be necessary in its judgment in connection with the issuance and sale of any of the notes. Payment for these services may be made out of the proceeds of the sale of the notes.

14562.11. Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code, do not apply to agreements entered into by the commission or the Treasurer in connection with the obtaining of financing pursuant to this article

14562.15. The State of California pledges to, and agrees with, the holders of any notes issued under this article that the state will not limit or alter the powers vested in the commission or any successor entity, the department or any successor entity, or the Treasurer, to finance projects or to fulfill the terms of any resolution authorizing the issuance of notes, or of any indenture or other contract or instrument securing notes issued pursuant to this article, or in any way impair the rights or remedies of the holders of the notes or of the parties until those notes, 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.

Article 4. Certificate Financing

14563. As used in this article, the following terms have the following meanings:

(a) "Certificate" means certificate of participation or other evidence of participation in a lease or installment sale agreement.

(b) "Lease financing" means a financial undertaking authorized by this article under which the lessee leases, or purchases on an installment basis, a project from the lessor, and the rental payments paid by the lessee or amounts paid in installments toward the purchase of the project and any other authorized or appropriated funds are used to repay the certificates, and the proceeds of the certificates are applied to pay the costs of the project and related costs as authorized by this chapter.

(c) "Lessee" means the Department of Transportation.

(d) "Lessor" means the commission, the State Public Works Board, a joint exercise of powers agency established between the lessee and any qualifying entity of government 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 or seller under the lease financing.

14563.3. The lessee may convey to the lessor title or other interests in real or personal property for the purpose of sale or lease-back. The lessee may lease or purchase projects from the lessor, and the lessor may lease or sell projects to the lessee. The lessor shall pay all or part of the costs of constructing projects with the proceeds from the sale of the certificates.

14563.4. The commission may cause or provide for the issuance of

certificates pursuant to this article by adoption of a resolution, with the concurrence of the Director of Finance, and upon satisfaction of all the requirements of Article 2 (commencing with Section 14560.5). The certificates are negotiable instruments.

14563.5. The terms of the lease financing shall be as specified in the lease, installment sale agreement, trust agreement, indenture, and any related documents executed and delivered between the lessor, the lessee, and the Treasurer. The total amount of the lease financing shall not exceed the amount necessary to fulfill the purposes set forth in Article 2 (commencing with Section 14560.5) and ancillary costs as permitted in this article. Any resolution or other documents providing for the lease financing shall specify, among other things, all of the following:

(a) The intended date after which the certificates may be issued.

(b) The term to maturity, which shall not exceed five years from the date of issuance. Any certificates issued to refund any earlier issued cerificates shall mature before or at the same maturity as the original certificates, and no certificates shall be renewed beyond that date.

(c) The rate or rates of interest, which may be fixed or variable, as agreed upon between the lessor and the purchaser, with the approval of the Treasurer.

(d) The denomination and form.

(e) The manner and place of payment. Certificates may be payable on a fixed date or upon demand of the holder of the certificates, as provided in the resolution.

(f) The terms of redemption prior to the stated maturity, at a price that shall not exceed 105 percent of the principal amount. The certificates may be made subject to redemption prior to the stated maturity at the option of the commission or at the option of the holder, or both, as provided in the resolution.

14564. A resolution authorizing lease financing may contain any of the following provisions, which are deemed to be part of the contract with a purchaser of the certificates:

(a) Pledging that all or any of the revenues in the State Highway Account in the State Transportation Fund during the same period during which the certificates are outstanding are available for the payment of all lease or installment purchase payments entered into pursuant to this article until the principal and interest with respect to all certificates are fully paid and discharged. There is created a first lien and security interest on revenues derived from the motor vehicle fuel license tax and the use fuel tax in the State Highway Account to secure all lease or installment purchase payments entered into pursuant to this article. No certificate issued pursuant to this article shall be or become a lien, charge, or liability against the State of California or against its property or funds except to the extent of the pledges expressly made by this article. Every certificate issued pursuant to this article shall contain a recital on its face stating that neither the payment of the principal with respect to it, nor any interest with respect to it, constitutes a debt liability, or general

obligation of the State of California other than as provided in this article. Neither the lessor nor the lessee may pledge the credit or taxing power of the state.

(b) Providing for the construction of any allowable project, and prescribing the duties of the lessor with regard to the project.

(c) Limitations on the purposes to which the proceeds of the certificates may be applied.

(d) The rate of rentals and other charges for use or purchase of the projects. The resolution may include limitations upon the power of the lessee to modify any leases or other agreements pursuant to which any rentals or other charges are payable.

(e) The setting aside of reserves or sinking funds and the regulation and disposition of them.

(f) Limitations on the issuance of additional certificates.

(g) Any other agreements with the certificate holders.

14565. The certificates or notes shall be sold by the Treasurer at public or private sale.

14566. The certificates are legal investments for any state special or trust fund, notwithstanding any provision of law limiting the investment which may be made by that special or trust fund, and are legal investments for all of the following:

(a) Trust funds.

(b) Insurers.

(c) Savings and loan associations.

(d) Banks.

(e) Cities, counties, cities and counties, or other public agencies or corporations.

14566.5. Certificates issued under this article are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of certificates by banks as security for deposits of funds of the state, or of any local public entity.

14566.7. Any state or local agency which is authorized to invest its funds in securities which are legal investments for savings banks may invest the funds in certificates issued under this article.

14566.9. Whenever the Treasurer determines that it will increase the salability of the certificates to obtain, prior to or after sale, a legal opinion as to the validity of the notes from attorneys other than the Attorney General, the Treasurer may obtain that legal opinion.

14567. Nowithstanding Section 13340, there is hereby continuously appropriated from the State Highway Account in the State Transportation Fund, without regard to fiscal years, the amount necessary to pay the rental or installment purchase payments for any lease financing instrument for which any certificates have been issued pursuant to this article, as the interest and principal on the certificates become due and payable.

14567.5. Subject to the limitations of Article 2 (commencing with Section 14560.5), the commission may employ financial consultants, advisers, accountants, legal counsel, and underwriters as may be necessary in its judgment in connection with the issuance and sale

of any of the certificates. Payment for these services may be made out of the proceeds of the sale of the certificates.

14568. Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code, do not apply to agreements entered into by the commission or the Treasurer in connection with the obtaining of financing pursuant to this article.

14569. The State of California pledges to, and agrees with, the holders of any certificates issued under this article that the state will not limit or alter the powers vested in the commission or any successor entity, the department or any successor entity, or the Treasurer, to finance projects or to fulfill the terms or any lease or installment sale agreement, or of any indenture or other contract or instrument issued pursuant to this article, or in any way impair the rights or remedies of the holders of the certificates or of the parties until those certificates, 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.

ARTICLE 5. ACTIONS AND PROCEEDINGS

14575. Any action or proceeding in which the validity of the adoption of a short-term financing plan or a resolution provided for in this chapter or the issuance of any notes or certificates under this chapter or any of the proceedings relating that validity is contested, questioned, or denied, shall be commenced within sixty days from the date on which any resolution authorizing the issuance of any notes or certificates pursuant to this chapter is approved. If no action or proceeding is commenced within that time, the notes or certificates and all proceedings in relation to the notes or certificates, including the adoption and approval of the resolution shall be held to be valid and in every respect legal and incontestable.

14576. An action to determine the validity of a short-term financing plan, notes, certificates, leases, contracts, including contracts with the state, the commission, or the department, the adoption of a short-term financing plan, or the taking of any other action by the commission or the department pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

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

Due to expected delays in construction of projects included in the 1988 State Transportation Improvement Program, resulting from the high priority given to seismic safety retrofit projects, new financing mechanisms, as provided by this act, are necessary immediately to allow construction of programmed projects in a timely and cost-effective manner.